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DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1990

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

Part 1 (Pages 1-711)

Board for International Broadcasting
Department of Justice
Executive Office of the President
Federal Trade Commission
International Trade Commission
Securities and Exchange Commission
The Judiciary
U.S. Information Agency

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DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1990

THURSDAY, FEBRUARY 23, 1989

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 9:31 a.m., in room S–146, the Capitol, Hon. Ernest F. Hollings (chairman) presiding.

Present: Senators Hollings, Bumpers, Lautenberg, Adams, Rudman, Hatfield, Kasten, and Gramm.

DEPARTMENT OF JUSTICE

ATTORNEY GENERAL

STATEMENT OF DICK THORNBURGH, ATTORNEY GENERAL

ACCOMPANIED BY:

- HARRY H. FLICKINGER, ASSISTANT ATTORNEY GENERAL FOR ADMINISTRATION
- MICHAEL J. ROPER, DEPUTY ASSISTANT ATTORNEY GENERAL, CONTROLLER
- ADRIAN A. CURTIS, DIRECTOR, BUDGET STAFF
- ALAN C. NELSON, COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE
- J. MICHAEL QUINLAN, DIRECTOR, FEDERAL BUREAU OF PRISONS
- ROBERT G. ULRICH, U.S. ATTORNEY, WESTERN DISTRICT OF MISSOURI
- STANLEY E. MORRIS, DIRECTOR, U.S. MARSHALS SERVICE
- RICHARD B. ABELL, ASSISTANT ATTORNEY GENERAL, OFFICE OF JUSTICE PROGRAMS

INTRODUCTION OF ASSOCIATES

Senator HOLLINGS. Good morning. We have our real chairman here. He allows me to hold this gavel for awhile.

Senator RUDMAN. We have been trying to get it back, but we haven't been successful.

Senator HOLLINGS. Mr. Attorney General, we want to welcome you and your distinguished group.

I note that we also have with us Mike Roper, the Deputy Assistant Attorney General, who is the Controller; Mr. Alan Nelson, the Commissioner of the Immigration and Naturalization Service; Mr.

Mike Quinlan, the Director of the Federal Bureau of Prisons; Mr. Stan Morris, Director of the U.S. Marshals Service; Mr. Richard Abell, Assistant Attorney General for the Office of Justice Programs, and Mr. Robert Ulrich, U.S. attorney, Western District of Missouri.

We welcome each of you and note that the requested increase of $820.1 million is 14 percent above the $5.750 billion appropriated for the present fiscal year for a total amount in 1990 of $6.570 billion.

I just wanted to state that for the record. Now let me yield to Senator Rudman.

Senator RUDMAN. I am just looking forward to hearing the Attorney General's statement, Mr. Chairman. Thank you.

PREPARED STATEMENT

Senator HOLLINGS. Gentlemen, you may proceed as you wish. We will include your statement in its entirety in the record, and you can highlight it or deliver it as you see fit.

[The statement follows:]

STATEMENT OF DICK THORNBURGH

Mr. Chairman and Members of the Committee: Thank you for giving me the opportunity to present the Department's 1990 request and to address ongoing programs and policies.

Before addressing today's problems, and how the Department's 1990 budget proposes to deal with them, I would like to observe that this year marks the commencement of the 200th anniversary of the Judiciary Act which established the Office of the Attorney General. The Constitution provides that the President "* * * shall take Care that the Laws be faithfully executed * * *" and the Judiciary Act of 1789 reiterated that an Attorney General should be appointed and sworn to fulfill this responsibility.

Faithfully executing the law of the land is now much more of a responsibility than it was when Edmund Randolph became the first Attorney General on a part-time basis. Let me state unequivocally that it is my intention to faithfully perform that duty and to apply all the management skills at my disposal to make the best possible use of the Department's available resources.

ACHIEVING A GOAL

Over the past several months, the press has reiterated the President's goal of a kinder, gentler nation. I have said that in doing this we will have to get rougher and tougher on some of our citizens—those behind the scourge of illegal drugs, those engaged in organized crime activities, those who violate the civil rights laws, and those who would betray the trust of governing and defraud some of our most esteemed institutions. Our budget proposal provides the funding for these and other enforcement efforts of the Department.

Looking back over the last 8 years, there is no doubt that the Congress has concurred with the Administration that more resources must be applied at the Federal level to control and reduce crime. Bipartisan support was essential for four of the legislative landmarks of the Reagan years—the Comprehensive Crime Control Act of 1984, the Anti-Drug Abuse Act of 1986, the Immigration Reform and Control Act of 1986, and the Anti-Drug Abuse Act of 1988. When these important pieces of legislation were under consideration, there were differences on how programs should be executed and coordinated, on the relative priority and effectiveness of various Federal programs, and on whether direct Federal programs should take precedence over programs administered by State and local governments. These debates will undoubtedly continue, but they should not obscure the fact that both the Administration and Congress recognize that increased law enforcement efforts depend ultimately for their success on underlying social attitudes that respect the integrity and importance of our legal system. I intend to work closely with the Congress to find more effective ways to apply resources and make it clear that we agree that all branches and levels of Government share responsibility for protecting our citizens.

DEPARTMENT OF JUSTICE AUTHORIZATION ACT

This year the Department of Justice will again submit to the Congress a bill to authorize appropriations for most of the components of the Department. Except for the Office of Justice Programs, which is separately authorized, no authorization act has been approved by the Congress since 1980. The 1980 authorization act has been extended annually, in the appropriations acts, with special provisions for undercover operations of the Federal Bureau of Investigation and the Drug Enforcement Administration. The authorization bill we are submitting for this year is almost identical to the one submitted last year except that it omits the United States Marshals Service Act, which was passed last year as part of the Anti-Drug Abuse Act of 1988. Prompt enactment of an authorization bill would enable the Appropriations Committees to move forward on appropriations matters with clear direction on related authorization issues and to eliminate from the appropriations act a number of provisions that are more appropriately placed in the authorization act or permanent law.

OVERALL BUDGET REQUEST

The budget request for 1990 provides a blueprint for a new decade of effective law enforcement. The budget authority request for 1990 contained in the budgets you have before you and the budget amendments proposed by President Bush total over $7.1 billion. Under current law and budget allocation rules, the amount that the Committees on Appropriations must address in 1990 is $6.570 billion. This is $731 million more than the $5.839 billion currently provided through general and special funds in 1989. The major reason for the $556 million difference between the total estimate for 1990 and the amount to be considered by the Committees on Appropriations is primarily explained by the recent creation of a number of self-financing funds.

FINANCIAL INSTITUTIONS FRAUD

Before I discuss the other budget thrusts contained in the 1990 budget, I must take note of the major crisis of fraud in financial institutions about which I have testified before the Senate Committee on Banking, Housing, and Urban Affairs as well as in other forums. The magnitude of failures in the savings and loan industry, and the fact that over a quarter of those failures were caused by fraud and insider abuse, signify serious white collar crime problems that require immediate action by the Department. The Administration is requesting for 1990 an appropriation of almost $50 million and over 650 new positions to investigate and prosecute these abuses. These resources will be applied to the Federal Bureau of Investigation, the United States Attorneys and the Criminal and Tax Divisions of the Department of Justice. A budget amendment will be submitted by the Administration late in February. In addition, supplemental funding will be requested in 1989 so that we can more rapidly stop the hemorrhaging of key financial institutions.

OTHER MAJOR BUDGET THRUSTS

Throughout the 1989 budget cycle, the Administration's request for additional drug resources met a positive response from those in Congress who had been made aware of the gravity of the issues. The Anti-Drug Abuse Act of 1988 demonstrates that Congress recognizes the need for new approaches in the war on drugs. While the Act provides a wide variety of key weapons with which to combat the nation's No. 1 law enforcement priority, it is unfortunate that the regular Department of Justice Appropriations Act for 1989, even when augmented by the supplemental funding that accompanied the new drug legislation, provided less than President Reagan had requested in his initial 1989 request for the Department's components involved in law enforcement. The short fall for the investigative agencies alone, namely the Federal Bureau of Investigation, the Drug Enforcement Administration, and the Immigration and Naturalization Service, when compared to the President's 1989 request, was in excess of $100 million. Similarly, the shortfall in those appropriations accounts which experience post-investigation costs, such as the United States Marshals Service and the Federal Prison System, exceeded $250 million. Likewise, there was a significant shortfall in our litigative resources. Furthermore, in 1989, we will absorb the full cost of the 4.1 percent pay raise that became effective for most employees in January 1989, special pay rates approved for many employees in high cost areas, and other mandatory costs. I realize that these cost absorption problems are common to most agencies, but with limited exceptions, Congress must recognize that current budgetary realities will require strong, focused management efforts for us to meet the modest expectations we had established in our initial 1989 program proposals.

In 1990, we will continue to make the Administration's war on drugs our top priority. Additionally, the request includes funding to move forward with a variety of more vigorous criminal prosecutions; to improve our capacity to house and care for an increasing Federal prison population; to confine, transport and produce more unsentenced Federal prisoners; to expand the use of automated technology that will improve productivity; to collect debts owed the Federal Government; and to represent the Federal Government in a wide range of litigation.

WAR ON DRUGS

Several months ago the Surveys and Investigations Staff of the House Committee on Appropriations was asked to look at the Federal Government's drug effort. The report noted that 41 different departments or agencies and their respective component organizations are participating in and expending appropriated funds for anti-drug abuse programs. Using the Surveys and Investigations Staff estimates, less than half of the funds expended for drug programs were slated for the Department of Justice. Some people worry that addressing a problem with a multitude of resources automatically signals a lack of coordination. Yes, coordination is essential, but we should be thankful that so many Government agencies recognize that they can make a positive contribution to reducing the demand for and the supply of illegal drugs.

I think that many people outside the Government are surprised at the array of responsibilities the Department has and the number of components within the Department that participate in the war on drugs. Foremost in everybody's mind, of course, is the Drug Enforcement Administration which has a direct 1990 appropriation request of $551.2 million to support 5,409 positions, including 2,513 drug enforcement agents. This is the front line of law enforcement that we all know about. Almost as well known is the narcotics related investigative work of the Federal Bureau of Investigation, which was formalized by order of the Attorney General on January 20, 1982, and which now focuses on coordinated investigations targeted against major drug trafficking organizations on a nationwide basis. We must also recognize the interdiction role of the Immigration and Naturalization Service (INS) which serves as a significant barrier against the entry of illegal drugs across our land borders.

Bolstering these front-line investigators and their support staffs are U.S. Attorneys who are charged with ensuring that those arrested for drug crimes will be prosecuted and, if convicted, serve stiff sentences. Investigation without the resources to prosecute becomes an empty exercise. The U.S. Attorneys must handle not only drug cases from Justice agencies, but also those from the Customs Service, the Coast Guard, the Internal Revenue Service, and a host of other agencies involved in criminal investigations. We must take care that the U.S. Attorneys and the courts resources are balanced so that they are not overwhelmed with drug cases to the degree that they cannot handle their other criminal and civil responsibilities.

Also in the chain of Justice activities is the Marshals Service and its responsibility for court security; execution of warrants; prisoner housing, handling, and transportation; witness security; seized asset management; fugitive investigations; and international extraditions. Finally, at the end of the Justice chain are the Federal Prison System and the U.S. Parole Commission.

The total budget estimate for the Department's drug effort in 1990 is $2.4 billion which includes $150 million for State and local drug grant programs. These funds will support 20,445 workyears, or 1,934 workyears more than we are planning for in 1989, and will address one of my major concerns as Attorney General which is to ensure that there is a proper balance of resources among all of the components of the criminal justice system—a responsibility that is shared by the Administration and Congress.

OBSERVATIONS ABOUT DRUG WAR

My appointment as Attorney General of the United States, as many of you know, represents a return appearance for me in the Justice Department. A decade ago I was head of the Criminal Division. If I had to identify the biggest single change in the Department in the intervening years, it would be the growth of our involvement with the international problem of drug abuse.

Late last fall, I visited a dozen of my law enforcement counterparts from the European community during a 10-day introductory trip. Before and since, I have met with other top law enforcement officials from around the world to ensure our continued cooperation on a variety of matters. All have agreed on the need for greater international cooperation in the war on drugs, a war that deserves our wholehearted support.

The modern plague of drugs preys upon young people, devastates families and communities, and threatens the well-being of all nations. Drug abuse disables millions of people and threatens to enslave millions more.

The toll that drugs exact on our societies extends far beyond the individual victim. In a sense, all of us become victims, for our health and safety is at stake when others use drugs. We become victims of the crimes that addicts commit to sustain their habits. Community values crumble, institutions weaken, and governments must divert resources and attention to those problems of crime and corruption that invariably accompany drug production, trafficking and abuse. In many countries, narcoterrorism flourishes as terrorists and traffickers enter conspiracies of convenience. Drug production and trafficking also have stunted social and economic development, corrupting whole societies through tawdry promises of wealth through drugs, and retarding efforts to maximize the productivity and efficiency of people in the workplace.

Drug traffickers have vast international networks, profits and arms at their disposal. They have no need to advertise their products, and they are able to gain access to villages, cities, schoolyards, workplaces, and locker rooms.

As drugs make their way from point of origin to point of sale, they pump billions of dollars into the pockets of traffickers and dealers who live at the heights of the high life as a result of the misery and devastation they visit upon others. There is no more international a business today than the drug cartels—a business where the raw materials are grown in one country, processed into illegal drugs in another, and shipped through several countries for sale in yet others. Profits from these sales are in turn recycled through laundered investments in a multitude of disguised transactions crossing many borders, often using legitimate international financial institutions.

The cost of drug abuse is bad enough in the United States where approximately 23 million Americans, or almost 1 in every 10 of our citizens, used an illicit drug within the past month; where approximately 70 percent of those arrested for other than drug charges tested positive for illegal drugs at the time of their arrest; and where nearly $100 billion a year is spent to combat illegal drug problems.

When we deal with drugs on the international level, we see even greater horrors that the drug trade can cause. Consider Colombia, for example. We see the drug traffickers who ambushed the security chief of a major Colombian newspaper last March, killing him in front of his wife, and shooting his 10-month-old daughter as well. We see the late Colombian Attorney General, Carlos Mauro Hoyos, kidnapped and found fatally shot in the head. We see Enrique Parejo, Colombia's ambassador to Hungary, tracked down and shot in Budapest by Colombian drug traffickers for having opposed them while he was Justice Minister. We see other honest government officials in Colombia and elsewhere who get miniature coffins in the mail, with pictures of their loved ones inside, courtesy of the drug traffickers.

If there is anything that could be called a bright side to the world-wide drug problem, it is that because the problem cuts across differences that are otherwise very great, it gives nations grounds for cooperation even while their relations in other areas may be difficult. This was evident in Vienna last December when over 100 nations adopted a United Nations Convention drafted to mount a concerted attack on drugs throughout the world. I was privileged to sign this document on behalf of the United States and to evidence our leadership in this effort which I hope and expect will receive early ratification by the United States Senate. This new multilateral agreement, entered into by drug-producing as well as drug-using nations, provides a number of new resources aimed at breaking the cycle of drug trafficking and money-laundering that sustains the drug cartels. Its adoption can dramatically increase our international cooperative efforts against drug dealers.

While the Convention itself does not alter the laws of any nation, it commits the signers to the enactment of new legislation where necessary and to increased cooperation among law enforcement officials.

Full implementation of this Convention would give our children, and their children, the gift of a world cleansed of what President Bush properly identifies as the "scourge of drug abuse," a world where governments carry out their responsibilities free of the corrupt influence of drug profiteers, a world where the vicious criminals now in control of transnational drug cartels are behind bars, their networks in ruins, and their seized illicit profits plowed back into more effective law enforcement.

One final matter deserves note. If we want to lose the war on drugs, we can just leave it to law enforcement. I do not mean to play down the brave efforts of those involved in the supply side of the drug trade. Instead, I mean that we must pay equal attention to the demand side—to reducing the consumption of drugs through programs of prevention, education, rehabilitation, and treatment and holding the drug user accountable for a share of the economic and social costs of drug dependency. It involves, in the final analysis, a re-affirmation of the value of a drug-free lifestyle and a recognition of the threat to our nation of continued tolerance of the plague of drug abuse.

ORGANIZED CRIME DRUG ENFORCEMENT

The 1990 budget implements Title I of the Anti-Drug Abuse Act of 1988 with its requirement to include a separate appropriation in the Department of Justice budget covering all Federal agencies participating in Organized Crime Drug Enforcement Task Forces.

The Task Forces grew out of the realization that effective and comprehensive attacks on major drug organizations are often beyond the capacity of a single agency. A multifaceted attack on highly sophisticated drug cartels requires unique capabilities combined into a comprehensive and orchestrated investigation and prosecution. I will work with the new Director of National Drug Control Policy in whatever role may be appropriate to further develop and implement a coordinated national drug strategy.

We agree with the provision in the Anti-Drug Abuse Act requiring a separate appropriation for the OCDE Task Force Program. This is an effective means to implement a national drug strategy. A similar proposal was announced on October 14, 1982, by President Reagan in the Great Hall of the Department of Justice when the concept of the OCDE Task Forces began. The proposal for an OCDE appropriation received a hearty endorsement in the Senate and was approved for use by the Congress in both 1983 and 1984. Beginning in 1985, we continued the Task Forces, but reverted to the more traditional direct agency appropriation concept to fund them. The theme of using a single appropriation for OCDE and other drug work was revived by Congress because the need for more flexibility in applying drug resources was recognized. The 1990 budget includes an appropriation request of $215 million that will be made available to eleven different components of the Justice, Treasury, and Transportation Departments that participate in the Organized Crime Drug Enforcement Task Force Program. Within the participating agencies, the OCDE Task Force amounts are reflected as reimbursements.

OTHER DRUG AND INVESTIGATIVE INITIATIVES

The Drug Enforcement Administration (DEA) is the only Federal agency in Government whose sole mission is drug law enforcement. Although President Bush's 1990 budget request of $551.2 million for DEA is only $16.7 million over its 1989 budget authority, the absolute increase is $85.1 million if we include over $68.4 million that it is scheduled to receive from the OCDE Task Force appropriation. With these additional resources, DEA is to expand its foreign drug suppression efforts, increase its resources to seize drug trafficker assets, destroy more clandestine laboratories, increase its own laboratory testing capabilities, expand in-service training for DEA personnel, and improve ADP and telecommunication capabilities. Also, resources are included to fund fully the 221 positions added in 1989 as a result of the Anti-Drug Abuse Act of 1988. In addition, President Bush has decided to ask for another $5 million to take advantage of several promising opportunities to suppress the growth and suppression of illegal drugs in foreign cooperative operations.

The $1.531 billion request for the Federal Bureau of Investigation is $91.8 million higher than its enacted 1989 appropriation of $1.439 billion. However, its absolute increase is $143.4 million if we include the planned reimbursement of $51.6 million in OCDE resources to the FBI. The budget request includes the Administration's new initiative to apply approximately $25 million and over 350 positions to investigate financial institution fraud and embezzlement, as well as increases of $12.2 million to annualize other FBI drug activities approved for funding in the Anti-Drug Abuse Act of 1988 including full funding for 279 newly authorized positions, $14.3 million in equipment to support other high priority field investigations and $23.3 million to augment investment within the ADP, telecommunications, and technical field support areas, offset, in part, by decreases totaling $11.3 million to stretch out implementation of office automation and the digital voice privacy radio system. Given that the FBI has had to absorb a great many mandatory costs over the last few years, this request represents the minimum acceptable fund level for the Bureau in 1990.

The Immigration and Naturalization Service request for 1990 is $866 million, an increase of $44 million over the 1989 budget authority. With the OCDE initiative, the increase would be $8 million more. The request includes 130 positions and $9.3 million to staff two new detention facilities for criminal aliens (Oakdale II in Louisiana and San Pedro, CA) and 24 positions and $1.4 million to staff a new advanced in-service training facility in Artesia, NM, that was acquired by the Federal Law Enforcement Training Center. The remainder of the net changes fund mandatory cost increases which are partially offset by proposed reductions to programs that have shown considerable increases in productivity and efficiency in the last few years as well as the transfer of various functions. In 1990, INS programs will be commensurate to 1988 levels.

LEGAL ACTIVITIES

The litigative and other legal work in the Department is conducted by the staff supported from three salaries and expenses appropriations—U.S. Attorneys, General Legal Activities, and the Antitrust Division. The Fees and Expenses of Witnesses Appropriation provides the resources necessary to pay expenses for others who appear in cases on behalf of the Federal Government.

U.S. ATTORNEYS

The U.S. Attorneys are the largest and most visible component of our legal arsenal. The supplemental appropriations provided by the recent Anti-Drug Abuse Act will enable the U.S. Attorneys to add in 1989 an additional $39 million in direct appropriations and another $30 million that is in the process of being transferred from the Assets Forfeiture Fund. A total of $22 million of this increase will be used to increase revenues through asset forfeiture and civil enforcement actions. Thus, in 1989 the U.S. Attorneys received budget authority totalling over $460.2 million, about $36 million more than our initial request.

In 1990, the Administration will request $476 million, including pending amendments, for the U.S. Attorneys, an increase of $15.8 million over the amount thus far made available in 1989. The total increase in resources would be $61.6 million if the $45.8 million identified in the OCDE Task Force budget for reimbursement to the U.S. Attorneys is taken into account. An increase of $5 million is earmarked for specific debt collection functions. Most of the remaining increase is designated to annualize program increases provided in 1989, but there are also additional resources requested to support office automation efforts. Furthermore, prosecution of financial institution fraud cases will require an amendment for an additional 256 positions and $21.7 million.

GENERAL LEGAL ACTIVITIES

The various legal divisions and other components funded from the General Legal Activities appropriation are requesting $298.6 million in 1990, about $53.8 million more than was provided in 1989. Over the last several years, this appropriation has been funded below the President's request level despite the increasing responsibilities that have been thrust upon its components. The continuation of our myriad litigation programs at current levels will consume much of the requested increase. The program increases being sought for the Department's litigating components are targeted to important revenue recovery initiatives and significant workload increases resulting from recent legislative changes. One of the newest initiatives involves the serious fraud and insider abuse affecting many of the nation's financial institutions. Within the Criminal and Tax Divisions we are requesting 50 positions and $3.3 million in 1990. In addition, the Tax Division requires 31 positions and $1.3 million to implement a major case initiative in conjunction with the Internal Revenue Service, and to expand debt collection activities. The Civil Division request for 71 new positions and $3.3 million is to address critical litigation in the Court of Appeals, to defend the interests of the Government in toxic tort and radiation claims, to address expanding consumer litigation, and to handle contract claims and fraud cases. This Division also requires additional resources to handle a growing number of claims arising from the National Childhood Vaccine Act. The Criminal Division requires an increase of 5 positions and $248,000 to deal with increasing demands in foreign extradition and legal assistance matters, and to support obscenity investigations and litigation. Faced with expanding workload as a result of major environmental legislation, the Land and Natural Resources Division needs 49 positions and

$1.9 million. These resources will allow the Division to aggressively enforce new and expanded criminal sanctions contained in recent reauthorizations of the Clean Water Act and the Safe Drinking Water Act; address increased civil litigation referrals from the Environmental Protection Agency; defend the Government against claims involving Federal facility compliance with environmental regulations; and address judicial review workload under the National Forest Management Act.

AUTOMATED TECHNOLOGY

Within the General Legal Activities appropriation there are two major ongoing automation activities that must be accelerated to make our work more efficient. Legal activities office automation, a separate activity in the General Legal Activities appropriation, has a $7.4 million increase request over current year funding to enhance funding for an integrated office automation system in the litigating organizations. Automated litigation support is the other major technological initiative. In 1990, increases totalling $11 million are contained in the requests of the Civil and Land and Natural Resources Divisions. Automated litigation support, a records management system for storage and retrieval of case related documents, is particularly necessary in complex cases because thousands and sometimes millions, of relevant documents must be quickly identified while preparing cases and bringing them to trial.

JAPANESE INTERNMENT

On August 10, 1988, the President signed Public Law 100-383 to implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians during World War II. Title I of the Act requires the Attorney General to identify and locate the estimated 60,000 Japanese Americans who were still living on the date the public law was signed and make a one time payment of $20,000 to each eligible person.

The Civil Rights Division is responsible for identifying interned persons of Japanese ancestry and administering the program. A 1989 supplemental request for $2.1 million to support 25 positions for General Legal Activities is proposed to staff the program. In 1990, $1.0 million to fund 40 additional positions is needed.

Payments to persons determined entitled to benefits will be made from a newly established Civil Liberties Public Education Fund as appropriations allow. The request for 1990 is $20 million. The Civil Rights Division's Office of Redress Administration will be prepared to begin benefit payments in 1990 after eligible persons have been identified and ranked in descending order of age.

ANTITRUST DIVISION

The $47.2 million request for the Antitrust Division reflects a small decrease for contracting out efforts, but is otherwise a current services budget. The Division continues to give priority to antitrust enforcement in the area of white collar crime, such as price fixing and bid rigging, with special emphasis on government procurement. In reviewing mergers, the Division applies increasingly sophisticated economic analysis and fully takes into account international competition and the realities of world marketplaces. The budget request includes a legislative proposal that would have the Antitrust Division assume the responsibilities of the Interstate Commerce Commission for reviewing rail related mergers, consolidations, and acquisitions, a function that is estimated to cost almost $1.5 million.

UNITED STATES MARSHALS SERVICE

The Department has three accounts managed by the Marshals Service, the regular Salaries and expenses appropriation, the Support of U.S. Prisoners, and the Assets Forfeiture Fund. The work of the Marshals Service is seldom glamorous, but it is a vital part of the justice system. As you may be aware, the Marshals Service is celebrating its 200th Anniversary this year.

The $228.8 million request for the Salaries and expenses appropriation is focused on providing new positions for the judicial security area and for handling an ever expanding workload caused mainly by the increasing complexity of the criminal justice process. The increased period of detention occurring before and during trials and the increased cost of housing Federal prisoners in State and local jails make it necessary for us to request $147 million for the Support of U.S. Prisoners appropriation. The $43.4 million program increase requested for this appropriation includes $15.0 million for the Cooperative Agreement Program under which the Federal Government assists in the renovation and construction of State and local jails near Federal court houses in exchange for guaranteed bedspace.

I might note that the Supreme Court's recent decision upholding the U.S. Sentencing Commission Guidelines will lengthen the time between prisoner conviction and sentencing which will result in an increase in the number of unsentenced prisoner days spent in local jails. Thus, that decision will affect the funding requirement of these two appropriation accounts and argues strongly for the President's request.

ASSETS FORFEITURE FUND

Although the Marshals Service is the day-to-day manager of the Assets Forfeiture Fund, this is a complex self-financing account into which the proceeds or sales of forfeited property are deposited. Over the past several years, the proceeds have been distributed to the components of the Department involved in the seizure and management of the assets, to participating State and local governments, and to the Federal Prison System for prison construction. Also, for 1989, the United States Attorneys will receive an additional $30 million from the Fund. Under the terms of the Anti-Drug Abuse Act of 1988, we estimate that $136 million in proceeds will be transferred at the end of 1990 to a Special Forfeiture Fund for use by the Director for National Drug Control Policy in accordance with the priorities articulated in the National Drug Control Strategy.

In the 1989 budget cycle, the Congress expended considerable effort to remove most of the mandatory expenses of the Fund from the appropriations allocation controls, an effort that allowed the Committees on Appropriations to increase funding for other vital programs. New legislation applicable to 1990 makes the process for allocating resources more complex, but we believe much progress has been made in resolving the appropriations allocation problem to the satisfaction of both the Administration and the Congress. I urge this and other Committees of Congress to resist further efforts to tap into seized asset receipts for purposes not currently authorized by law.

U.S. TRUSTEES SYSTEM FUND

Before moving to the Federal Prison System, I would like to make a few comments about a growing program that is totally self-financing but, under current law, has all of its expenses charged against the allocation to the Committees on Appropriations. This is the United States Trustees System Fund, an operating program that supervises the administration of bankruptcy cases in the Federal Bankruptcy Courts. What was once a small program operating in only selected judicial districts, was expanded to provide essentially nationwide services by the Bankruptcy Judges, U.S. Trustees, and Family Farmer Bankruptcy Act of 1986. In 1988 and 1989, the Congress set a $47.4 million ceiling on expenditures for the program, an amount that allowed for orderly expansion; but in 1990 it is difficult to see how a nationwide program can be operated unless we are permitted to spend $62.8 million from the amounts we expect to collect, as well as using some of the balances brought forward from prior years, particularly since this program is conducted at no expense to the Federal Government.

CORRECTIONS

Overcrowding in the Federal Prison System has been of increasing concern as the Federal courts sentence more and more prisoners to longer terms. During the 1989 budget process, Congress recognized that increased resources must be applied to prison construction and the operation of correctional institutions. We appreciate the attention given to this priority. Unfortunately, the overcrowding problem is not abating despite the activation of several new facilities.

The Buildings and facilities request for 1990 is for $401.3 million or $13.2 million more than the sum of the 1989 appropriation of $299.3 million and the $88.8 million we plan to transfer from the Assets Forfeiture Fund at the end of 1989. With the resources and leasing authority requested in 1990 for new construction, we would be able to provide 6,845 additional beds for sentenced inmates and increase the Federal Prison System's detention capacity for unsentenced prisoners by 1,000 beds. Two new complexes proposed to be located in the Northeast and West would each accommodate 1,960 inmates at a total cost of $231.1 million. Another $58 million would be used to construct a 700-bed detention center in Miami. Expansion of existing institutions would provide 1,015 beds at a cost of $41.8 million, and we believe that we can provide further additional bedspace by acquiring surplus facilities that can be converted to minimum security camps. Finally, with the necessary authority, we believe we will be able to provide additional bedspace for 1,160 inmates by leasing two Federal Correctional Institutions. The leasing arrangement is important to us because the initial budget authority and outlay requirements are significantly less than direct construction projects.

As we move forward with our construction projects we must prepare them for occupancy, staff them, and move in prisoners. Last year, when the Attorney General was before this Committee, there were approximately 44,000 prisoners in Federal institutions. Today there are around 46,600. For 1990, the average daily population projection is 56,400. In addition, approximately 7,500 sentenced prisoners will be housed in contract facilities, principally community treatment centers.

The 1990 budget request for the administration, operation, and maintenance of Federal correctional institutions is about $1.15 billion, or $200 million more than was provided in 1989. The largest program component of this increase is the request for $45.4 million to activate new institutions that will be ready for occupancy in 1990. With this funding, 634 positions will be added to manage an additional 2,680 bedspaces. The next largest increase, $24.5 million, is necessary for the expenses associated with the feeding, health, and other expenses associated with an increased inmate population. Another $22.5 million to fund 1,500 positions is requested to support the expansion of staff at existing overcrowded institutions, and almost $11 million more is needed to replace equipment and inventory destroyed during the Mariel Cuban riots. There are a number of other smaller increases that are indirectly related to the ever expanding prison population and the costs necessary to contain it.

OFFICE OF JUSTICE PROGRAMS

The most significant change that President Bush made to President Reagan's budget is his endorsement of a $150 million drug grant program for the Office of Justice Programs. With this amendment, the total request for the Justice Assistance appropriation increases from $96.3 million to $246.3 million.

When the President addressed the Congress on February 9, he announced a multifaceted war on drugs. I join him in the belief that it is important to stimulate State and local governments to develop and carry out specific programs which offer a high probability of improving the criminal justice system. We are fortunate that the Anti-Drug Abuse Acts of 1986 and 1988 have provided us with the necessary authorizing legislation. Sufficient funding has been provided previously so that we are confident that we can successfully build on our previous experience to develop and support a national drug control policy within the context of the Unified Grant Program authorized in the 1988 Act.

There is a legislative mandate that 80 percent of the additional funds, or $120 million, must be distributed as formula grants to the States and that the remaining $30 million be used for discretionary grants. Existing legislation requires that the States must not reduce existing anti-drug efforts and that they provide a 50 percent match to Federal formula grants. With the combination of formula and discretionary grants I hope that at least 30 percent of the additional funding can be applied to demand reduction programs.

President Bush's new budget initiatives provide us other good news. Instead of having only $90 million available for the Crime Victims Fund, as we originally estimated, we are now certain that we will reach the statutory limit of $125 million because of a large increase in projected criminal fine collections.

Although, the Office of Justice Programs budget has been significantly modified by the initiatives of the new Administration, there are an array of other activities in the earlier proposal that we must continue to support. For example, law enforcement research and statistical programs are most beneficial to the criminal justice system if they are conducted at the Federal level. A program increase of $2,000,000 is proposed for the National Institute of Justice to develop less than lethal weapons that can be effectively used in police work. For the Bureau of Justice Statistics program increases totaling $1,417,000 are requested to implement the redesign of the National Crime Survey, to conduct a nationwide census of jails and inmate characteristics, and to collect more comprehensive data on how Federal cases are handled from prosecution through corrections. The budget proposes to continue the Missing Children's program at a slightly enhanced level. The death benefits for public safety officers that were more than doubled by the most recent Anti-Drug Abuse Act are funded in both 1989 and 1990 at a level that should fulfill the entitlement requirements. Administrative services are provided to support the requested programs and to provide for the orderly phaseout for several grant programs that we believe have a relatively low Federal priority or can be funded by the States with their own resources.

OFFICE OF INSPECTOR GENERAL

The budget request includes a new appropriation for an Office of Inspector General in response to the Inspector General Amendments of 1988 contained in Public Law 100-504. Under this Act, the Department is directed to establish the new Office by transferring positions and related resources from five other Departmental components that maintain audit and related investigation functions. Accordingly, the Department will transfer 276 positions and approximately $9 million in 1989 to fund the Office and make it operational for about half of fiscal year 1989. In 1990, the full year cost of maintaining the transferred functions will be $18.9 million. To further strengthen the function and effectively manage the merged resources, we are asking for 14 additional positions and $532,000 in 1990.

Soon after I assumed office, it was apparent that there was overwhelming support in Congress for legislation that would establish an Inspector General for the Department of Justice. The compromise language that we negotiated with the Congress dealt effectively with our concern over the protection of certain extremely sensitive matters and allowed us to maintain our Office of Professional Responsibility—a small office that has functioned with great integrity in circumstances that have, at times, been very difficult.

GENERAL ADMINISTRATION

The last appropriation that I will address in any detail is General Administration. The $99.3 million request is about $11 million more than last year's appropriation but it contains almost no new resources to expand routine administrative costs associated with the control and provision of services to an expanding Department. Indeed, I have already taken steps to reduce overhead costs and place more resources at the front line of operations. Budgetary pressures forced me to make these kinds of decisions when I was Governor of Pennsylvania and I plan to apply many of the same approaches in the Department.

The increases that we are proposing involve several programs that are more operational than administrative but which have for various reasons been funded through the General Administration appropriation. The largest overall increase is for the Executive Office for Immigration Review, an Office that has had its work expand steadily since the passage of the Immigration Reform and Control Act of 1986.

Debt collection, which I will deal with separately, will require an additional $3.5 million. Another six positions and $500,000 is requested by the Administration to support a national study on catastrophic nuclear accidents. Program increases are offset in part by the transfer out of 65 positions, $3.4 million for financial operations and the transfer in of one position and $80,000 for the national security program in the Justice Management Division. A complex series of mandatory increases, annualization of functional transfers for the Office of the Inspector General, and savings resulting from contracts with the private sector comprise the remaining changes.

DEBT COLLECTION

In our Justice Management Division we are requesting 13 positions and $3.5 million to enhance the work of a small unit that runs a pilot project to test the effectiveness of using private sector debt collection lawyers and a modern computer system to collect delinquent non-tax debts from deadbeats who resist reasonable requests from Government agencies to pay their debts and must be sued before living up to their financial responsibilities. This is one of the Administration's initiatives to implement the Federal Debt Recovery Act. We believe that this project, which features a central control over our docket of debts and their collection, shows great promise.

While the United States Attorneys are at the front line of our debt collection efforts, other priorities, such as drug prosecution, have left us with few new resources to expand debt collection efforts. Near its very end, the 100th Congress recognized a specific collection problem by earmarking additional resources for the U.S. Attorneys to accelerate asset forfeiture and civil enforcement actions leading to the forfeiture of seized assets. This was commendable, but there is a need for a much more aggressive debt collection position by the Federal Government. I am proud that the Department was able to collect over $479 million in cash in 1988 for delinquent civil debts, judgments, penalties, and criminal fines, and during the first quarter of 1989 we have collected another $182 million, an amount that is far above the amount collected in any comparable period. Despite the strides we are making, it is distressing that so many debts remain unpaid for years and that unpaid criminal fines are increasing.

OTHER CHANGES

There are a number of components that are relatively small that I should mention. The Parole Commission and the Foreign Claims Settlement Commission are autonomous from the Department in budgetary decisionmaking, but the reduced workload of both these organizations explain why the Administration's request for 1990 is less than the amount provided in 1989. The Community Relations Service, a small organization charged with the responsibility for the resolution of community disputes and the resettlement and care of certain Cuban and Haitian entrants, will maintain its existing program. Finally, the National Institute of Corrections, a component of the Federal Prison System, will continue to provide leadership in improving State and local correctional programs at the current services level.

CONCLUSION

The budget proposed by the Administration represents a careful allocation of Federal resources crafted to obtain a smoothly functioning system of justice designed to focus on high priority areas and to stimulate Federal, State, and local law enforcement efforts in those areas that promise to be most productive.

I would like to thank the Committee for this opportunity to meet with you and present the views of the Department of Justice.

SUMMARY OF STATEMENT

Mr. THORNBURGH. Thank you, Mr. Chairman. I have a somewhat abbreviated version of the statement that's been submitted for the record, and I think it perhaps would set a framework for some constructive discussion if I were to give you the benefit of that statement.

Senator HOLLINGS. Very good.

Mr. THORNBURGH. Thank you, Mr. Chairman, and Senator Rudman for the opportunity to present the Department's 1990 budget request and to address our ongoing programs and policies.

Before addressing today's agenda and how the Department's 1990 budget proposes to deal with it, I would like to observe that this year marks the commencement of the 200th anniversary of the Judiciary Act which established the Office of the Attorney General. The Constitution provides that the President "—shall take care that the laws be faithfully executed—" and the Judiciary Act of 1789 reiterated that an attorney general should be appointed and sworn to fulfill this responsibility.

Faithfully executing the law of the land is now much more of a responsibility than it was when Edmund Randolph became the first attorney general on a part-time basis. Let me state unequivocally, however, that it is our intention to faithfully perform that duty and to apply all the management skills at our disposal to make the best possible use of the Department's available resources. Together we can enhance our justice system and meet at the same time the President's call for a kinder, gentler Nation.

We need to foster the bipartisan agreement that has produced the Comprehensive Crime Control Act of 1984, the Anti-Drug Abuse Act of 1986, the Immigration Reform and Control Act of 1986 and most recently, the Anti-Drug Abuse Act of 1988. If we have different views on how programs should be coordinated or on the relative priority and effectiveness of various Federal programs, on whether scarce Federal funds should be invested in programs administered by State and local governments, our debate should not obscure the fact that the success of law enforcement depends ultimately on underlying social attitudes that respect the integrity and importance of our legal system. I intend to work closely with the Congress to find more effective ways to apply resources and make it clear that we agree that all branches and all levels of government share responsibility for protecting our citizens.

DEPARTMENT OF JUSTICE AUTHORIZATION ACT

The Department will submit an appropriations authorization bill for all components of the Department. The authorization bill we are submitting is almost the same as last year's bill. The U.S. Marshal Service Act is not included since it was enacted as part of the Anti-Drug Abuse Act of 1988. Prompt enactment of the authorization bill will provide the Department with updated permanent operating authorities for the first time since 1980 and will allow a number of provisions that are in the appropriations request to be more properly placed in the authorization act as permanent law.

OVERALL BUDGET REQUEST

President Bush's request for 1990 budget authority, including budget amendments totals over $7.1 billion. Under current law and budget allocation rules, the amount that the Committee on Appropriations must address is only $6.570 billion. The $556 million difference is primarily explained by the recent creation for a number of self-financing funds. The $6.570 billion request is $731 million or 12.5 percent more than the $5.839 billion provided through general and special funds in 1989. I would like to note that many programs funded in this appropriations act produce substantial receipts for the Government.

FINANCIAL INSTITUTIONS FRAUD

Before I discuss other budget thrusts, I want first to mention the financial institutions fraud initiative that the President has proposed and about which I testified earlier this month. As we announced earlier, attacking financial institutions fraud and insider abuses is a key part of our crackdown on white-collar crime. The President's comprehensive proposal to attack the financial institutions problem will increase the Department of Justice's 1990 budget by approximately $50 million. The increase will provide resources for over 650 new investigators, attorneys, and their supporting staff. Because the problem is so acute, we are also requesting a 1989 supplemental appropriation so that we can expand our work in this area without delay.

OTHER MAJOR BUDGET THRUSTS

In 1990, we continue to make the President's war on drugs our top priority. Our request also includes funding to expand our capacity to house and care for a growing prison population; to confine, transport, and produce for court appearances more unsentenced prisoners; to expand the use of automated technology to improve productivity; to represent the Government in a wide range of important civil and criminal litigation; to collect debts owed the Government, and to respond to new statutory requirements.

WAR ON DRUGS

Let me deal with each of these briefly. According to the surveys and investigations staff of the House Committee on Appropriations, 41 separate departments, agencies, and subordinate organizations are participating in and expending appropriated funds for antidrug abuse programs. These programs range from drug enforcement and interdiction to user focused education, prevention, treatment, intervention, and accountability initiatives. Less than one-half of the funds expended were provided to the Department of Justice despite our broad range of drug responsibilities.

The total budget estimate for the Department's drug effort in 1990 is $2.4 billion. This does not include the $38.3 million in the organized crime drug enforcement appropriation, which is to reimburse non-Justice agencies. These funds will support 20,445 work-years or 1,934 more work-years than funded in 1989. This substantial increase is vital for the Department to meet the demand of the war on drugs that we are all committed to waging. To do this, we must recognize the needs of all components of the criminal justice system, or the system becomes unbalanced. Thus, for 1990, we seek limited growth for drug matters within the Drug Enforcement Administration and the Immigration and Naturalization Service. Together with the Federal Bureau of Investigation, these agencies constitute the front line of drug law enforcement.

The war against drugs affects every one of our communities. In it, law enforcement, of course, has a vital role. We must be and intend to be unrelenting in our efforts to put drug dealers behind bars. As long as enough people are willing to pay exorbitant prices for illegal drugs, others will risk prison or even a racketeer's rubout to try to make themselves rich by supplying the demand. We are thus committed to fighting the drug war with all of the law enforcement resources at our disposal.

The drug cases of Justice, Treasury, and other investigators are prosecuted by the U.S. attorneys, aided by the Criminal and Tax Divisions. For the prosecutors, we mainly seek to retain the additional resources which you provided in the Anti-Drug Abuse Act of 1988. We seek growth for the U.S. Marshals in court security and prisoner handling to address the workload arising from increased drug prosecutions. At the end of the chain are the Federal prison system and the U.S. Parole Commission. We propose substantial prison construction.

One major initiative President Bush is proposing in his 1990 budget is to continue the drug grant program in the Office of Justice Programs by providing $150 million. These funds, of which we hope that at least $45 million can be applied to demand reduction projects, will stimulate State and local governments to not only continue, but also develop and carry out specific programs which offer a high probability of improving the criminal justice system.

The requests presented in this budget are not large. With limited Federal resources, we must fight this war smarter. Yet these new resources are extremely important. The costs we must absorb this year and next year will constrain our operational presence.

One final matter deserves note. I surprised an audience last week by noting: "If we want to lose the war on drugs, we should just leave it to law enforcement." I did not mean, of course, to play down the brave efforts of those involved in attacking the supply side of the drug trade. Instead, I meant, and I do mean, that we must pay equal attention to the demand side, to reducing the consumption of drugs through programs of prevention, education, rehabilitation, and treatment and holding the drug user accountable for his or her share of the economic and social costs of drug dependency. This will involve, ultimately, a reaffirmation of the value of a drug-free lifestyle and it is, I suggest, a job for all of us within government and without.

ASSETS FORFEITURE FUND

The assets forfeiture fund is a complex, self-financing account into which the proceeds or sales of forfeited property are deposited. For 1990, we estimate receipts of $470 million and total expenses of $337.7 million. Program and other expenses subject to specification in appropriations acts are estimated to be $100 million. Of the remaining expenses, over $128 million will go to State and local governments as equitable sharing payments.

We estimate that $136 million in surplus funds will be transferred at the end of 1990 to the special forfeiture fund for use by the Director for National Drug Control Policy or drug czar, if you will. I urge the subcommittee to resist further efforts by interests to tap into the assets forfeiture fund. Law enforcement is generating the revenue for the fund, and our criminal justice system should not lose further use of these hard-won revenues.

INCARCERATION

A major priority of the 1990 budget, as I mentioned, is to obtain additional prison and jail space to house the increasing number of Federal sentenced and unsentenced prisoners. We appreciate the priority given to this need by the Congress in recent appropriations. Our need continues to reflect the success of enhanced law enforcement programs and criminal law improvements over the past decade.

For 1990, we seek $401.3 million for the "Buildings and facilities" appropriation to construct and renovate correctional facilities. With these resources, we would be able to provide 6,845 more beds for sentenced inmates and increase the Federal prison system's detention capacity for unsentenced prisoners by 1,000 beds. This will be accomplished by adding two new prison complexes proposed to be located in the Northeast and West, constructing a 700-bed detention center in Miami, expanding several existing facilities, acquiring surplus facilities that can be converted to minimum security camps, and leasing two correctional institutions.

In addition, we are requesting $147 million for the "Support of U.S. prisoners" appropriation. The $43.4 million program increase requested for this appropriation includes $15 million for the Cooperative Agreement Program under which the Federal Government assists in the renovation and construction of State and local jails near Federal courthouses in exchange for guaranteed bed space.

The increasing prisoner population and the enhanced number of prison facilities increase our need for staff and operations funding. The Federal prison population is now about 46,600. For 1990, the average daily population projection is 56,400. In addition, about 7,500 sentenced prisoners will be housed in contract facilities, principally in community treatment centers.

PRISONERS IN CONTRACT FACILITIES

Senator BUMPERS. How many was that again that will be contracted?

Mr. THORNBURGH. Seven thousand five hundred sentenced prisoners will be housed in contract facilities.

The 1990 request for operation of correctional institutions is about $1.15 billion, or $200 million more than was provided in 1989. The largest increases are to activate new institutions that will be ready for occupancy in 1990 and to pay expenses associated with the feeding, health, and other care of an increased inmate population. Also, funding is included in the 1990 request for the Immigration and Naturalization Service to activate two detention facilities for criminal aliens.

LITIGATION

The U.S. attorneys are our largest and most visible litigative organization. Our 1990 request for the U.S. attorneys primarily continues supplemental funding provided in the Anti-Drug Abuse Act of 1988 for drug prosecutions, assets forfeiture, and civil enforcement litigation, as well as other needs. However, we are seeking $5 million to establish a debt collection fund to facilitate the collection of moneys owed the Government and $1.1 million for staff needed to implement modern office automation technology throughout the 94 districts. It also includes the President's proposal for additional funding for the prosecution of fraud in financial institutions.

The various legal divisions and other components funded from the "General legal activities" appropriation are requesting $298.6 million in 1990. Over the last several years, this appropriation has been funded below the President's request, despite the increasing responsibilities and workload of its components.

The program increases requested include funding for a major case initiative by the Tax Division in conjunction with the Internal Revenue Service; high stakes civil litigation involving toxic tort, radiation, National Childhood Vaccine Act, contract and fraud claims; Criminal Division work on foreign extradition and legal assistance matters and obscenity prosecutions; and major environmental litigation by the Land and Natural Resources Division arising from reauthorization of the Clean Water Act and the Safe Drinking Water Act and increased civil litigation referrals from the Environmental Protection Agency. We are also seeking funding for office automation and automated litigation support contracts to enable our litigators to manage the massive caseloads with limited attorney and support staff.

DEBT COLLECTION

We are proud of the fact that the Department collected over $479 million in cash in 1988 in civil debts, judgments, penalties, and fines. During the first quarter of 1989, we collected $182 million more. This far exceeds the amount collected in any comparable period. As I noted, we are requesting $5 million for the U.S. attorneys to encourage more aggressive debt collection.

In addition, we need $3.5 million more within the Justice Management Division for the pilot private counsel debt collection project now underway. These funds are used primarily to finance the contractor-operated central intake facility. This is the hub that provides the essential link between the Federal creditor agencies, the Department, and the private counsel. However, unlike the private counsel, the facility is not funded from the amounts collected.

OTHER SIGNIFICANT CHANGES

Let me mention briefly some other changes. On August 10, 1988, as you know, the President signed Public Law 100–383 to implement the recommendations of the Commission on Wartime Relocation and Internment of Civilians during World War II. I have assigned responsibility to the Civil Rights Division to identify and locate the estimated 60,000 Japanese Americans still living who were deprived of their property and liberty and to make the one-time payment of $20,000 to each person eligible at the time the act was passed.

A 1989 supplemental request for 25 positions and $2.1 million for general legal activities is proposed to initiate this program. Payments to eligible persons will be made from a newly established civil liberties public education fund as appropriations allow. These payments cannot be made until all eligible persons are identified and ranked by age, because the oldest eligible recipient must be paid first. The request for 1990 is $20 million.

The 1990 request includes an appropriation for an Office of Inspector General. Pursuant to the Inspector General Amendments of 1988, the Department will transfer 276 positions and over $9 million in 1989 to fund the office for about one-half of the year. In 1990, the full-year cost of the new office will be $18.9 million. To further strengthen this function, we are asking for 14 additional positions and $532,000 in 1990.

The Immigration and Naturalization Service budget for 1990 includes reductions to program funding of over $31 million. The reductions have been applied across all program areas and are possible because of the creation of special receipt accounts such as the "Legalization fee" and "Examinations fee" accounts and increased productivity and efficiency in enforcement operations.

Excluding the $150 million request for the Office of Justice Programs drug grant program, we are requesting $96.3 million for research and statistical activities that can be conducted efficiently at the Federal level. This includes $2 million for the National Institute of Justice to develop less than lethal weapons for use in police work and $1.4 million for the Bureau of Justice Statistics to implement the redesign of the national crime survey, to conduct a nationwide census of jails and inmate characteristics, and to collect more detailed data on how Federal cases are handled from prosecution through corrections.

The redirection of funds from a number of grant programs is proposed to support more urgent program needs of the bureaus and litigating divisions of the Department. A reordering of priorities is essential if continued progress is to be made in critical Federal law enforcement efforts.

CONCLUSION

The budget that you have before you, I believe, represents a careful balancing of the needs of Federal, State, and local governments. I hope that you will give the budget request the support it deserves. I am now pleased to consider any questions you may have.

OTHER PREPARED STATEMENTS

Senator HOLLINGS. That is an excellent statement, and I appreciate it, and the committee appreciates it very much. We also have statements from several of those that accompany you that I will insert in the record at this point.

[The statements follow:]

STATEMENT OF ROBERT G. ULRICH

Mr. Chairman and Members of the subcommittee: I am pleased to have the opportunity to appear before you in support of the 1990 budget request for the United States Attorneys.

The United States Attorneys, who are the principal litigators on behalf of the U.S. Government, are requesting a total of $454,279,000, 6,105 permanent positions (including 2,727 Assistant United States Attorneys) and 6,041 work-years for 1990. This will permit drug prosecutions to continue at the level provided by the Anti-Drug Abuse Act of 1988, facilitate movement from an obsolete office technology toward an integrated office automation approach and enable a more aggressive debt collection program in the Department of Justice. Further, the United States Attorneys will be reimbursed $45,788,000 for 669 positions and 652 work-years associated with the Organized Crime Drug Enforcement Task Forces. Finally, consistent with President Bush's goal to expand prosecution efforts in our financial institutions industry, a budget amendment will be transmitted to include $21.7 million to fund 256 positions and work-years, so we can soon begin to deal with the hemorrhaging financial institution fraud quickly and effectively. We expect the Administration to submit a 1989 supplemental appropriation request for this purpose as well.

ROLE OF THE UNITED STATES ATTORNEYS

Within each of the 94 Federal districts in the 50 States, Guam, the Northern Mariana Islands, Puerto Rico and the Virgin Islands, the United States Attorney is the chief law enforcement representative of the Attorney General, enforcing Federal criminal law and handling most of the civil litigation in which the United States is involved. It is our mission to prosecute those who mock our nation's criminal laws, to protect the public from those who would further their private interests at the expense of the general welfare, to protect the legitimate powers of the Federal Government from those who would usurp such powers, and to assert affirmatively, through the courts, those national policies established by Congress, the Administration and the Attorney General.

In performing our mission we function as an integral part of the Federal justice system. Our efforts are in concert with those of the investigative agencies, the courts and the rest of the executive branch of government. The Federal justice system must be viewed holistically. Placing emphasis or increased resources on any one area creates a ripple effect, affecting all areas. For example, when resource increases are approved for the Department's investigative agencies, it results in more criminal matters presented to United States Attorneys. Thus, increases in prosecutional resources must be applied assuring these investigative resources are not wasted.

NATURE OF THE 1990 REQUEST

Last year the United States Attorneys were provided much needed resources for the war on drugs as a result of the Anti-Drug Abuse Act of 1988. Our 1990 request seeks resources to sustain that level of positions for a full year. The United States Attorneys also request resources to maintain an enhanced level of prosecutorial efforts in the Savings and Loan Strike Forces.

Additionally, we are requesting increases in funding and positions for office automation implementation and training, and funding for the development of a more aggressive and effective debt collection program in the Department of Justice.

OFFICE AUTOMATION

An increase of $1,105,000, 25 positions and 13 work-years is requested for Project Eagle to provide an integrated office automation system for the 94 United States Attorneys' offices. The United States Attorneys have experienced tremendous growth in their case and administrative workloads; which demands efficient technology. Thus, it is imperative to have adequate systems. The Project Eagle equipment will replace various obsolete and deteriorating work stations with an integrated system which provides word processing, litigation and administrative support, legal research and case management capabilities. The additional funding covers only the costs of new positions necessary to develop and integrate software, assist with equipment installation, and provide training to the United States Attorney field office personnel who will utilize the Project Eagle system.

DEBT COLLECTION

The vast majority of the Department's financial enforcement work is done by the United States Attorneys. We are the litigators; we perform the postjudgment enforcement of the most difficult debt collection cases for the other Federal agencies. It is our job to collect delinquent debts when other means have not met with success. Cases are referred to us only after our client agencies' efforts to collect debts through administrative procedures and private collection agencies have failed. We handle such debts as student loans, Small Business Administration loans, VA housing loans and educational overpayments, HUD home improvement loans, USDA farm and housing loans and civil fines imposed by the agencies.

The Department and the United States Attorneys have accomplished much but there is far, far more to do. We are requesting an increase of $5 million to develop a more aggressive and effective debt collection program in the Department of Justice. Debt collection activities have been declared a priority initiative in order to return significantly more money to the U.S. Treasury. Through the administration of a $5 million Debt Collection Fund, the United States Attorneys will devote moneys to promote and improve the performance of all Department personnel involved in debt collection functions. The Fund will provide non-personnel moneys for debt collection work and will make money available for training and special services related to debt collection. It will also finance miscellaneous services such as auctioneer fees, title searches, survey costs and appraisals.

Thank you for your time and attention. I'm sure you recognize the importance of the United States Attorneys' mission and I appreciate this opportunity to present our budget request to the subcommittee. I will be happy to answer any questions you may have.

STATEMENT OF STANLEY E. MORRIS

Mr. Chairman and members of the subcommittee: I am pleased to appear before you today in support of the Marshals Service's 1990 appropriations request, and to discuss our role in the law enforcement community, particularly our efforts in the War on Drugs.

As you know, Marshals Service responsibilities span both the executive and judicial branches. Consequently, the needs of our clients—the judges, witnesses, attorneys and investigative agencies, and the prisoners themselves—determine our workload. As the entire criminal justice system directs more attention to anti-drug activity, our needs likewise increase, especially to enhance security throughout the process.

Finding suitable detention space for prisoners is a crisis of national proportion at all levels of government, Federal, State and local. So too, is the staggering number of drug cases burdening the Federal docket. These problems affect everything the Marshals Service does. How the Service responds will determine the ultimate success of the judicial process and the outcome of efforts such as the War on Drugs.

From our position we see first-hand how the system is responding to this crisis, and more importantly, those "stress points" that must be shored. While the framework remains solid, after two centuries the cracks are visible.

With this in mind, I would like to highlight our resource requirements and major program areas.

SUMMARY OF 1990 REQUIREMENTS

For 1990, we seek a total of 3,100 positions and $714 million for three separate appropriations: Salaries and expenses, United States Marshals Service; Support of United States Prisoners; and, the Department of Justice Assets Forfeiture Fund.

Salaries and expenses, United States Marshals Service.—The request of 3,100 positions and $228.8 million, includes 166 positions and $7.7 million for program increases in Judicial Security, Prisoner Handling and ADP.

Support of United States Prisoners.—For 1990, $147 million is sought for this appropriation, an increase of $36.9 million compared to this year's level. Included is $15 million for the Cooperative Agreement Program.

Assets Forfeiture Fund.—Budget authority totaling $337.7 million is estimated for 1990, an increase of $11.7 compared to the 1989 estimate. This includes $100 million in definite budget authority, $25 million more than this year's level.

Let me briefly describe how these requests support our basic missions.

JUDICIAL SECURITY

Preserving the safety and integrity of the judicial process remains the Marshals Service's highest priority. For 1990, an additional 83 positions and $4.7 million are requested to fulfill this critical responsibility.

Next year, about three-fifths of the criminal proceedings requiring Marshals Service security will stem from drug-related charges. Most of the remaining cases will have defendants just as dangerous, ranging from alleged organized crime figures, to seditionists and international terrorists. The security impact such proceedings will have on our workload is readily apparent.

In 1990, we estimate that the time devoted to criminal proceedings will rise 20 percent and threats against the judiciary will rise about one-third above 1988 levels. When measured against last year's record, the 1990 criminal docket may present unprecedented challenges. Three cases, one completed in 1988, another ongoing, and one still in the pre-trial stage, demonstrate this disturbing trend.

The case of the *United States* v. *Scutari, et. al.*, tried in Fort Smith, Arkansas, involved 14 defendants from alleged Anti-Semitic and Neo-Nazi groups charged with sedition. Before their acquittal these defendants spent over 1 year in Marshals Service custody. The Fort Smith office has only six full-time deputy Marshals. During the course of the proceedings, some 50 deputies were sent from other districts to ensure adequate security.

A trial which began last year and still continues is *United States* v. *Rupley. et. al.*, in Reno, Nevada. Reno has only five full-time deputies, hardly enough to guard the 20 defendants charged with manufacturing, possessing, and selling controlled substances; along with racketeering and operating a criminal enterprise. They also threatened witnesses and law enforcement officers in open court during pretrial hearings. The trial will last through March and will cost more than $1 million for Marshals Service security alone.

The case of the *United States* v. *Juan Matta-Ballesteros*, is now in the pretrial stage. The defendant, reputed to be the key figure controlling the flow of illegal drugs from Mexico, faces numerous drug charges, and may have been involved in the murder of DEA agent Enrique Camarena Salazar. Matta-Ballesteros has been in Marshals Service custody since last April. The security surrounding his pretrial appearances is rivaled only by that afforded his drug cartel associate, Carlos Leheder-Rivas, who was convicted in Jacksonville last year. No date has been set for Matta-Ballesteros' trial, which, once started, could last well into 1990.

Once infrequent, such cases (particularly multiple-defendant proceedings in remote venues lasting years at a time) are now all too commonplace. Simply put, their growth outstrips our ability to support them. Absent additional resources, we may face recommending continuance of certain proceedings for lack of adequate safety.

All 83 positions and $4.7 million sought for Judicial Security in 1990 address this concern. Of this total, $2.5 million is for Special Assignments. This provides the resources necessary to augment district staff during high-threat proceedings by allowing the Service to assign deputies from other districts to the understaffed venues and pay for their overtime and travel while on assignment.

In 1988, the proliferation of such proceedings saw the number of deputies on Special Assignment double from the previous year. So far this year, Special Assignment requirements are ahead of the 1988 pace. Security for the Matta-Ballesteros trial could easily be $1 million. He spent twice that much to bribe his way out of a Colombian prison in 1986.

Another 15 deputy Marshal positions and $500,000 provide the "backfill" needed to ensure that Special Operations Group (SOG) members can be deployed for security and prisoner transportation at high-threat proceedings and home districts can maintain ongoing operations during their absence. The Service deploys SOG teams specially trained in security and anti-terrorist tactics for those missions requiring the highest degree of safety.

Finally, 68 deputy Marshal positions and $1.7 million are required to meet the increased demand for ongoing district-based judicial security. The lessons of the past few years are clear: any venue can be the site of major trial, no courtroom is immune. The Service has some 300 offices in 94 Federal Judicial Districts, nationwide. They average fewer than 10 operational employees. (When you discount large metropolitan areas such as New York, Los Angeles and Chicago, the average is about 5.) No district, particularly a smaller one, can provide the security needed for upcoming proceedings without additional help. These resources provide the critical flexibility we need to respond to such proceedings.

WITNESS SECURITY

Another fundamental Marshals Service responsibility is the protection provided those witnesses—and their family members—who testify on the Government's behalf. As the Witness Security Program approaches its 20th anniversary, it finds a new breed of incoming client, as well as a "second generation", the sons and daughters of original witnesses. Both will have a substantial impact on the program's future. The program's response will determine the continued success of the Government's efforts to gain testimony against and conviction of major organized crime and drug leaders.

Since 1970, over 5,600 witnesses and 6,400 family members have entered the program. Today, over 800 persons receive active protection and funding. In 1990, another 340 principle witnesses are expected to enter the program. (Four-out-of-five will testify in drug-related cases.) Increasingly, these witnesses are foreign-born, and their background reflects the crimes (notably drugs and terrorism) exported to our shores. The problems they present for protection and relocation (language and cultural barriers, for instance) are in sharp contrast to those of their native-born predecessors and offspring.

All new witnesses receive counseling and orientation at the Service's Orientation and Safesite Center. Once enrolled, they receive a full range of services: redocumentation, relocation, (the principal forms of protection), and around-the-clock protection on those occasions when they give testimony and/or return to the "danger area." In cases where these witnesses testify, almost 90 percent result in conviction.

PRISONER DETENTION AND TRANSPORTATION

The Marshals Service receives an average of 85,000 prisoners a year. This constancy, however, belies fundamental changes in both the caliber of prisoner and the length of confinement, changes at the core of today's detention crisis.

Prior to enactment of Bail Reform provisions in 1984, those held were detained an average of 3 weeks. Now their length of detention approaches 50 days. Placing most of these prisoners in Bureau of Prison (BOP) facilities is not an option; in major Federal court cities, Federal prison overcrowding exceeds 70 percent. Today, about three-quarters of all unsentenced Federal prisoners are detained in State and local jail facilities.

In late 1988, the Marshals Service daily prisoner population reached 11,000—double the 1984 level. Today the problem rages beyond control. Its effects can be seen in nearly every district in the country.

In South Carolina, where the prisoner population has jumped 77 percent since 1985, a plan to have counties house local sentenced prisoners up to 3 years before their transferral to State institutions will eliminate most jail space available for Federal use in that district. Other districts, like Western Missouri, Vermont and Southern West Virginia experienced over a 150 percent prisoner increase since 1985. What do the Marshals in these districts do? They join the ranks of Marshals who transport prisoners hundreds of miles on a daily basis to maintain court appearances and provide suitable jail space.

In Oregon, deputies travel as far as 30 miles from the Canadian border (a 600 mile round trip) to house prisoners. In Rhode Island, daily trips to Otisville, New York, 140 miles one way, are routine. The worst situation remains in the Northern District of California, however. Three times a week, vans are sent from San Francisco to Terminal Island, south of Los Angeles, to pick up prisoners for court appearances. A one-way trip is 425 miles and takes over 8 hours.

Nationwide, more and more deputies must transport prisoners to and from court, and do nothing else. They start their journey early in the morning and end late at night (working paid overtime in the process) just to do that! Such journeys provide risks for our deputies, and endanger the public as well.

It can only get worse. In 1985, fewer than 40 percent of the prisoners in Marshals Service custody were held for drug-related charges. Now, that figure exceeds 70 percent. Their length of confinement and numerous court-related appearances put enormous strains on the system.

In 1990, prisoner productions will approach 555,000, up 46 percent in 2 years. Likewise, length of confinement will grow by more than one-third during this period, due largely to the type of prisoner at hand and major criminal justice reforms, particularly the Bail Reform and Sentencing Reform Provisions of the Comprehensive Crime Control Act of 1984.

Where there used to be one trial, there are now the equivalent of three separate proceedings. Bail Reform keeps the most dangerous defendants in jail during all pre-trial phases. Next comes the actual trial. At the end, Sentencing Reform results in another 2 to 4 weeks of presentencing confinement as the length of imprisonment is determined!

There is a bright spot, however. The National Prisoner Transportation System (NPTS) continues to move prisoners long distances, safely and within court-ordered deadlines, at a fraction of the commercial cost. Through efficient scheduling and economies of scale—the airlift moves up to 100 prisoners at one time with a fraction of the security personnel—NPTS realizes savings simply impossible to achieve at the district level, where prisoner productions are a daily event. Over 120,000 prisoner "passengers" are expected to travel via NPTS in 1990, about one-third more than 1988.

To address each facet of this situation, 83 positions and $2.1 million are requested for prisoner handling increases for the Marshals Service appropriation. This includes 54 positions and $1.4 million to meet the requirements associated with increased prisoner productions. Another 24 positions and $600,000 are sought for dedicated NPTS flight crews. And, 5 positions and $100,000 are needed for negotiating and awarding Cooperative Agreement Program for (CAP) guaranteed jail space in Federal court cities.

Significant increases are also required for the Support of United States Prisoners appropriation. The President's budget includes an estimate of over 2,794,500 jail days for 1990, 45 percent above the 1988 level. The daily rate is expected to reach $43.05, up nearly one-fifth since 1986.

Estimating the number of jail days and the jail day rate is difficult, as shown by our frequent requests in past years for supplemental funding. Please note that the above estimates may be conservative.

While 90 percent of the $147 million requested for Support of Prisoners is to house and care for unsentenced prisoners, $15 million is earmarked for the Cooperative Agreement Program, as part of a second phase of a five-part Department of Justice plan to increase detention space. This will provide for construction of over 600 State and local jail spaces (guaranteed up to 15 years) in areas where there are severe shortages. CAP appropriations for succeeding years must be maintained at the same level, however, if any long-term improvements in the national jail space crisis are to be realized.

FUGITIVE APPREHENSION

Each year, the Marshals Service arrests some 14,000 fugitive felons, one-half on behalf of other Federal agencies. More than 50 percent of the Service's felony fugitives are wanted for drug related offenses.

In 1988, 16 of our "Top 15" fugitives were arrested or located by Marshals Service investigators. Among these were Alphonse Persico, an organized crime figure, whose arrest was the result of an 8-year international manhunt; Elton Royce Winchester, a career criminal, convicted murderer and narcotics trafficker; and, Pilar Pereada-Villapudua, an international cocaine dealer.

International extraditions and location of fugitives at the request of foreign countries are other significant components of our fugitive investigation activity. The

Service effected 200 international extraditions in 1988, and located fugitives such as Alvaro Rafael Saravia-Merino (wanted for the slaying of El Salvadoran Archbishop Oscar Romero) on behalf of other countries. The number of international extraditions is expected to reach 300 in 1990, 50 percent more than 1988.

DISTRICT OF COLUMBIA SUPERIOR COURT

The functions the Marshals Service performs on behalf of the D.C. Superior Court are unique, in that we act as sheriff for the Nation's Capital. In many respects, however, this district displays all our problems in microcosm, everything from a jail space crisis (Lorton) to defendants in drug-related murders and other violent crimes who must be produced in court. The Superior Court operates 6 days a week, in over 60 courtrooms in four separate facilities. Marshals Service deputies produce as many as 250 prisoners each day for matters ranging from felony assault to family court hearings. This district also handles all court-ordered evictions. The job we do in this office (with fewer than 100 people) rivals that of any major metropolitan law enforcement agency in the United States.

SEIZED ASSETS PROGRAM

The Marshals Service's seized assets program continues to yield outstanding results. Provisions included the in Anti-Drug Abuse Act of 1988 advance this effort. Foremost among these are exemption of certain procurement activities from Federal Acquisition Regulations (ensuring that security and confidentiality of criminal cases will not be compromised) and authority to pay for services directly related to identification of forfeitable assets (reducing "liability" seizures.) Moreover, the clear distinction between definite and indefinite budget authority puts equity in scorekeeping and recognizes the uncontrollable nature of asset management.

At the start of 1990, almost 35,000 seized properties will be in Marshals Service custody, twice the 1988 total. The value of these properties will approach $1 billion. The estimated Fund income of $470 million is predicated on the assumption that all U.S. Attorneys recently authorized for assets litigation will be litigating forfeitures by 1990. As a result of these efforts, over $200 million in additional income above the 1988 level is expected to be realized in both 1989 and 1990.

One of last year's most notable forfeitures resulted from the conviction of the two Torres' brothers and 12 co-conspirators in the Southern District of New York. At sentencing, the judge remarked, "The complete list of crimes reads like an encyclopedia of narcotics-related wrongdoing." The Torres organization existed solely to make its members wealthy, and their conviction resulted in the forfeiture of a shopping center, bowling alley, three gas stations and seven residences in Puerto Rico, luxury sports cars, a yacht, expensive jewelry, and over $500,000 in cash.

MANAGEMENT AND SUPPORT SERVICES

Operational demands continue to outpace logistical support, and the gap widens each year. The $900,000 sought for ADP improvements in 1990 directly supports the operational mission.

To see any improvement in the timely dissemination and use of information, such improvements are essential. The resources are requested for three critical areas: (1) automation of prisoner transportation scheduling activities; (2) development of a Defendant Based Tracking System at the district level; and, (3) expansion of the Warrant Information Network's (WIN) centralized database.

Automated prisoner transportation scheduling optimizes time and cost savings and further enhances NPTS operations. A Defendant Based Tracking System provides the Marshals Service, and all other Justice law enforcement agencies, the capability to track the prisoner population as it proceeds through the criminal justice process. Our vantage point in the system—we are responsible for everything from arrest to final disposition of the case—affords us the opportunity to capture and share data not available anywhere else. Finally, expansion of the WIN central processing capability is essential for timely fugitive apprehension.

CONCLUSION

In step with the changes and growth the country has experienced, the U.S. Marshals have continued to respond to the needs of the executive and judicial branches. Now, as in the past by fulfilling the right to due process, maintaining a secure and open court environment, and safeguarding members of the judiciary and protected witnesses, the Marshals Service plays a critical role in preserving, protecting and defending basic Constitutional guarantees. And, we intend to improve upon our record in the years to come.

This concludes my statement, Mr. Chairman. I shall be pleased to answer any questions the Subcommittee may have.

STATEMENT OF ALAN C. NELSON

Mr. Chairman and Members of the Subcommittee: I am pleased to have the opportunity to appear before you in support of the 1990 budget request for $866,459,000 and 13,792 positions for the Immigration and Naturalization Service. When funds from the non-appropriated Legalization Fee ($54.8 million), Immigration User Fee ($105 million) and Immigration Examinations Fee ($26.5 million) accounts are taken into consideration, total resources available to INS in 1990 will be over $1 billion.

The 1990 budget request includes two program increases. The first is an increase in the Detention and Deportation program, 130 positions and $9,275,000, to staff and operate two new detention facilities, one in San Pedro, California, and a second facility in Oakdale, Louisiana. Both of these facilities are under construction and will become operational during 1989.

The second increase, 24 positions and $1,356,000, is in the Training program and will provide staff and operating resources for INS journeyman level training at a new Federal Law Enforcement Training Center facility in Artesia, New Mexico. This will provide for training needs that cannot be met at the existing FLETC facilities in Glynco, Georgia.

The budget also includes a net increase of $65,005,000 in adjustments to base costs, primarily mandatory increases associated with salaries and benefits for existing on-board staff, $2,247,000 and 257 positions in decreases related to management and productivity improvements, and $28,953,000 and 1,398 positions in program decreases which are requested in order to meet budget levels proposed by the Administration and to bring our authorized positions in line with available resources for personnel and benefits costs. We request a transfer in the estimates of $4,177,000 to annualize the 1989 transfer of 135 positions moving the functions of the INS Office of Professional Responsibility and the Office of Program Inspections to the Department of Justice Office of Inspector General.

Finally, the 1990 budget requests 13,792 positions, a net reduction of 1,501 from the 1989 level. This level of authorized positions is in keeping with the resources available to fund personnel. It reflects a budget which emphasizes cost effectiveness, productivity improvement, and efficient management.

Since I appeared before you last year a number of changes have occurred in INS' programs, particularly in those authorized by the Immigration Reform and Control Act (IRCA) of 1986. At this time, I would like to review these changes and our accomplishments with you and look ahead to efforts that are planned for 1989 and 1990.

LEGALIZATION PROGRAM

The first phase of the Legalization Program ended on May 4, 1988, the deadline for submitting applications for temporary resident status. Over 1.8 million aliens applied during the 12 months allowed in the Reform Act. As expected, a "surge" of applications materialized during the last 6 weeks of Phase One. We anticipated this, and we were prepared for it. Overall, we are very pleased with the manner in which the program operated, given the constraints involved in starting this major national program 6 months after IRCA was enacted.

As of February 3, 1989, over 1.3 million aliens had been approved for temporary resident status. We anticipate that by April, 1989, all of the temporary resident applications will have been adjudicated, with total approvals projected to reach 1,730,000.

On November 7, 1988, Phase Two of the Legalization program began. During the 24 months covered by this phase of the program, we project that 1,698,000 aliens will apply for permanent residence. Operations are proceeding smoothly. Some aliens have already received their permanent resident cards. In order to assure the greatest possible turnout, we will again be conducting a public information campaign aimed at encouraging aliens who received temporary resident status to complete the process and become permanent residents.

Fees received from applicants during Phase One totalled over $287 million. These receipts together with those which will be received during Phase Two will assure that the Legalization Program is completely fee supported as the Reform Act requires.

AGRICULTURAL WORKERS PROGRAMS

The Special Agricultural Workers (SAW) Program officially ended on November 30, 1988. As with Legalization, there was a late surge in applications during the final weeks of the program. Over 1,294,000 applications were received. As of February 3, 1989, 357,472 of these applications had been adjudicated, and 335,492 had been approved. Of the over 900,000 applications remaining to be processed, we expect to find a substantial incidence of fraud, which our review process is set up to detect. In addition, organized fraud in the SAW program is being investigated vigorously.

We are now well along with the development of plans for the Replenishment Agricultural Workers (RAW) Program, authorized by Section 303 of the Reform Act. If a shortage of available workers is supported by Department of Labor data, the program will allow the admission of additional workers.

EMPLOYER SANCTIONS

The Employer Sanctions program is now fully implemented. We set a difficult but attainable goal of 1 million employer contacts during the educational phase of the program. Our personnel achieved this goal and established a solid foundation for this major program. In 1989 and 1990, educational informational activities will continue to be pursued.

Enforcement efforts are well underway. In 1988, warnings were issued to 3,061 employers for possible sanctions violations. Our agents served 648 "Notices of Intent to Fine" on employers for substantial and paperwork violations. Since October 1, 1988, an additional 739 Notices were issued, for a total of 1,387. The Service's General Counsel has taken the steps necessary to assure the effective prosecution of sanctions cases in the courts. Enforcement of sanctions must be pursued as a priority for the law to be fully effective and to maintain compliance in the business community. While we feel that most employers will comply voluntarily, some must perceive a strong possibility that they will be detected and prosecuted before they will meet the requirements of the law.

As an aid to employers, the Service developed and implemented the Legally Authorized Workers (LAW) program. The program provides information on sources of workers authorized for employment in the United States, allowing employers to avoid employing illegal aliens and to comply with sanctions requirements.

CRIMINAL ALIENS

The Investigations program has been expanded in order to increase operations focused on removing criminal aliens from the Nation. There is no question that these individuals cause considerable harm and must be apprehended, detained and removed without delay.

In New York City, Chicago, Los Angeles and Miami, pilot projects are fully operational and are improving INS' responses to referrals by local law enforcement authorities regarding arrested aliens charged with drug-related violations, as well as improving access to INS' automated information systems for checking arrested aliens' immigration status.

The Service has assumed a significant role in the Organized Crime Drug Enforcement (OCDE) program. One hundred full-time Special Agent positions are committed to this important nationwide effort. They are getting results. In 1988, our agents apprehended 662 criminal aliens involved in illegal drug activities which were investigated under OCDE initiatives. Drug case related seizures and forfeitures included: $9.7 million in currency, 184 vehicles, 714 weapons, 1,996 kilograms of cocaine, 2,589 vials of "crack", 145 pounds of heroin, 65,247 pounds of marijuana, and 50 pounds of amphetamines. The value of these drugs is estimated to be $119.5 million. Clearly, INS has accomplished much through the OCDE program.

The National Alien Criminal Apprehension Program (ACAP) was fully implemented during 1988. Agents were able to double apprehensions over 1987 with over 22,000 criminal alien cases in 1988. This level of activity is expected to continue and grow in the future. We feel that taking vigorous action against criminal aliens by apprehending, detaining and removing them from the country expeditiously, will be of considerable benefit to the nation and will be pursued as an agency priority.

SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENTS (SAVE) PROGRAM

We have continued to make progress with the implementation of the SAVE program, a national effort to prevent illegal or ineligible aliens from receiving benefits through federally funded entitlement programs, such as aid to families with dependent children, Medicaid, unemployment compensation, food stamps, and certain housing and educational assistance programs. All States are now participating in the program in varying degrees. During 1989, we expect to be increasing the number of State agencies with access to the SAVE database, the Alien Status Verification Index. This information resource contains over 25 million records and can be accessed by seven different methods, including a voice data response using a touchtone telephone. Full implementation of the SAVE program in all entitlement programs has the potential for saving from $2 to $3 billion in payments. This is significant at a time when efforts to control government spending are receiving greater emphasis.

BORDER ENFORCEMENT

During 1988, apprehensions of aliens by the Border Patrol totalled 969,214. This was down approximately 16 percent from the 1987 level and 43 percent below the 1986 level. Based on information obtained by the Patrol from aliens, the employer sanctions program is a key factor in the apprehension decline. IRCA is working. However, economic pressures in Mexico and Central America will continue to motivate aliens to migrate to the United States regardless of the risks and the lower probability of finding employment.

Apprehensions of non-Mexican-Nationals reached 40,936—up 19.3 percent over the prior year. These individuals came from over 130 different countries. This is an interesting trend which will be watched carefully. It is an important trend because these aliens require longer periods in detention, thus incurring greater costs and occupying valuable space. The State Department has been in contact with the Mexican government in an attempt to stem the flow of people from Central America to the border.

During 1988, we continued to make excellent use of dogs in conjunction with Patrol traffic checkpoint operations. The presence of canine units is a definite deterrent to alien smugglers and drug smugglers. We now have 66 units in operation. Their continued and expanded presence on the border will provide increased strength to our efforts to interdict aliens and drug shipments. In addition, Patrol agents with dogs are also contacting large numbers of school children through our drug education efforts. Through this relatively modest program, over 200,000 students have received anti-drug information by using the dogs to gain the children's interest and promote demand reduction.

INS dogs successfully assisted in rescue efforts in Brownsville, Texas, after the collapse of a three-story department store which trapped a number of people in the wreckage. Six lives were saved as a result of our canine units. In a number of other cases, the lives of aliens locked in railroad boxcars have been saved due to these units.

In 1988 drug seizures by Border Patrol personnel were significantly up over 1987 levels. Agents made 3,257 seizures valued at over $700.5 million. Marijuana (160.7 tons) and cocaine (6.5 tons) again were the two most frequently intercepted drugs. The cocaine seized was ten times the amount seized just 3 years earlier. Border Patrol drug interdiction operations have been a clear success, accounting for 60 percent of the drugs seized on the Southern Border. This is a clear indication of the level of drug trafficking which exists on the land border and, by every indication, is continuing to grow. A strong Patrol presence is essential to the Nation's overall strategy to control and reduce the flow of narcotics across the borders and into our communities and cities.

USER FEE PROGRAM

The Service has continued to use the User Fee Program to improve and expand inspectional services for international travelers. In 1988, INS personnel inspected 48.4 million persons at airports and seaports, intercepting 76,123 inadmissible aliens (15 percent above 1987 inadmissible intercepts).

Delays have been reduced and service to the traveling public has been significantly improved. The flexibility of this program has been and will remain the key to its success. It has allowed the Service to adjust and expand the staffing of airport inspections around the country, and to keep pace with the growth in international travel during recent years. The program is an excellent example of what can be achieved by cooperative efforts between the Legislative and the Executive Branches.

ADJUDICATIONS AND NATURALIZATION

In the Adjudications program, applications and petitions for immigration benefits increased slightly in 1988, with 2,245,487 applications received compared with 2,221,465 in 1981. In 1989, we expect to experience a significant permanent increase in this workload as newly legalized aliens submit petitions on behalf of their relatives. Our projections continue to point to a 50 percent increase in the Adjudications program workload which is, according to the Department of State, a very conservative projected increase in workload.

The direct mail initiative, which began in 1986, will be a key element in efforts to cope with the growth of the program. Phase Two of direct mail, which will involve mailing almost all non-interview applications and petitions to our four Regional Service Centers, should be operational by the end of 1989. Phase Three involves receiving all remaining casework at the Centers. This phase will be completed with the transfer of additional data processing equipment to the Centers from the Legalization program as that major effort is being completed, thus reducing the Legalization program's need for ADP equipment. We feel that the efficient transfer of equipment will stabilize costs in the Direct Mail program.

In 1989, the Adjudications program will have a new source of funds from which to draw and improve its operations and the service to the public—the Immigration Examinations Fee Account. This account, which was established under Section 209 of the Department of Justice Appropriation Act of 1989, allows INS to retain fees collected from applications, in excess of $50 million. These resources can be used for expenses in providing adjudication and naturalization services. We anticipate using resources from this account to increase Service Center staffing for Phase Two of the Direct Mail program in order to handle the processing demands related to the increased application and petition workloads.

The Examinations Fee Account will provide the Service with a source of funds that can be applied directly to improving our responsiveness to the public by reducing backlogs and decreasing processing time for applications.

CURRENT STATUS OF ASYLUM SITUATION IN SOUTHERN TEXAS

I know that you are aware of the recent events related to the flow of frivolous asylum applicants into Southern Texas. In early 1988; 40 to 50 political asylum applications were received weekly. These numbers rose steadily during the summer to over 1,000 applications a week by September, 1988. Thus far, 1989 asylum requests are averaging one-third higher than last year. If allowed to continue, this could produce more than 100,000 asylum requests during 1989. In order to deal with this flood of applications under the Service's uniform asylum policy, a task force of 16 immigration examiners and 8 support personnel was detailed to the Harlingen District Office to expedite processing and to deter frivolous asylum claims from economically motivated migrants. Between December 16, 1988 and February 8, 1989, the task force received 10,614 applications.

In view of the growing seriousness of the situation, additional resources are being committed to the effort as a part of a plan to create an effective deterrent to those persons who would manipulate our asylum laws by filing frivolous applications.

The plan includes expedited asylum adjudication in the Rio Grande Valley, a full and fair process for qualified applicants to gain asylum, and detention and deportation for unqualified applicants.

A total of 500 INS personnel from throughout the country will be sent to South Texas to implement the plan. Border Patrol personnel will be augmented to enhance enforcement along the border and to provide additional detention security. Adjudications personnel and support will be augmented to expedite the processing of applications. Detention and Deportation resources will be augmented to provide for detention of applicants who are in an illegal status and to provide for the deportation of those aliens whose claims are adjudicated and denied.

Approximately 141 INS, Department of State and Executive Office for Immigration Review staff will be detailed to provide fair and expeditious adjudication of asylum claims.

Resources have also been committed to Miami and Los Angeles as well. Adjustments will be made to deal with the problems at hand. The situation is being monitored carefully to assure that, if additional steps are needed, timely action will be taken. The State Department has been in contact with the Government of Mexico regarding the need to limit the flow of Central Americans through Mexico. We are hopeful that some progress can be achieved on this.

CONCLUSION

As you can see from this overview, the Service has made great strides in implementing new programs and in maintaining the performance of on-going efforts. Your interest and support have been and will continue to be essential to our efforts.

Thank you, Mr. Chairman and members of the Subcommittee.

STATEMENT OF J. MICHAEL QUINLAN

Mr. Chairman and Members of the Subcommittee: I am pleased to appear before you today to discuss the Federal Bureau of Prisons' 1990 budget request. As you will note, our request totals $1,563,998,000 and 17,782 appropriated positions, increases of $213,839,000 and 2,320 positions above the 1989 levels. The majority of these increases are directed toward the continued expansion of Federal prison capacity. It is essential that we expand capacity to keep pace with the projected growth in the inmate population and, at the same time, reduce the critical level of overcrowding in the Federal Prison System.

INMATE POPULATION GROWTH/PROJECTIONS

Mr. Chairman, the number of Federal inmates in the direct custody of the Bureau of Prisons is now approaching 46,500. The Federal inmate population has increased by over 22,700 inmates or 95 percent in the past 8 years, an unprecedented rate of growth. This growth reflects the success of Federal law enforcement efforts, particularly those directed at drug trafficking. The number of Federal inmates incarcerated for drug offenses has been steadily rising. In 1981, 25 percent of the total Federal inmate population were drug offenders compared with 43 percent today. And the percentage continues to increase.

While it is impossible to predict future inmate population levels with precision, I believe we all are in agreement that the number of Federal inmates will continue to increase. Our 1990 budget projects that inmate population will increase to 56,400 in 1990 and will reach at least 83,500 by 1995. This revision from last year's projections takes into account our continuing assessment of the impact of the Anti-Drug Abuse Act of 1986. It also includes an estimate of the impact of the new sentencing guidelines developed through our close work with staff of the U.S. Sentencing Commission. We believe our population estimates continue to be relatively conservative.

PROGRESS IN REDUCING PRISON OVERCROWDING

We firmly believe that current prison overcrowding coupled with substantial growth in the future prison population will create a major crisis in the Federal criminal justice system unless we continue and accelerate our facilities expansion program. This potential crisis has been addressed directly by the Attorney General through the establishment of a prison capacity expansion plan which will reduce Federal prison overcrowding to 30 percent by 1995 under current inmate population projections.

As you know Mr. Chairman, we have already made significant progress, increasing Federal prison capacity by more than 4,500 beds since 1981. With the continued support of Congress including supplemental funding provided by the Anti-Drug Abuse Act of 1988 and enhancements from the Department's Assets Forfeiture Fund, funding is currently available to further expand capacity by 15,700 beds.

In 1988, the Bureau of Prisons activated the new Federal Correctional Institution at Marianna, Florida and completed construction of the Los Angeles Metropolitan Detention Center. Four Federal Correctional Institutions are currently under construction in New Jersey, Oregon, Georgia and Pennsylvania. Within the next several months, construction will begin on three more Federal Correctional Institutions in Pennsylvania, Texas and Kentucky. A site has been selected for a Federal Detention Center in Puerto Rico and sites are actively under consideration for Federal Correctional Institutions and Detention Centers in the northeast, southeast and south central United States.

Despite this progress, currently funded capacity increases are clearly insufficient to meet both future population increases and reduce overcrowding. If no additional resources for prison construction were provided for 1990 and beyond, overcrowding would reach 90 percent by 1995; a level of overcrowding entirely unacceptable in our criminal justice system.

PLANS FOR CAPACITY EXPANSION IN 1990

Our 1990 budget requests $360.6 million in funding for 7,845 new prison beds through the construction of two Federal Correctional Complexes; the expansion of seven existing institutions; a lease program for two Federal Correctional Institutions; the acquisition of surplus properties for conversion to minimum security facilities; and the construction of a Metropolitan Detention Center and two detention units at existing facilities.

The Correctional "Complex" is a new site and design approach that we are undertaking to help reduce prison construction costs as well as future operating expenses. Under this approach, several correctional facilities of different security levels, for example, a maximum security U.S. Penitentiary, a medium security Federal Correctional Institution and a minimum security Federal Prison Camp, would be constructed at one site. Also, the design capacity of medium security Federal Correctional Institutions would be increased from the current level of about 500 to a capacity of approximately 900. This will be accomplished by initially designing two-thirds of the prison's cells for two inmates each.

Our experience over the past several years has demonstrated that the Bureau of Prisons can safely operate medium security prisons with a majority of the cells housing two inmates each. However, the Bureau of Prisons continues to believe that the design standard for maximum security prisons should be a single inmate in a single cell.

In addition to our plans to construct new prisons for sentenced offenders, the Bureau of Prisons continues to assist the U.S. Marshals Service in housing pretrial detainees. We have developed close cooperation between both agencies through joint planning efforts.

The U.S. Marshals Service (USMS) first attempts to meet its detention responsibilities by contracting with local jails through the use of Intergovernmental Agreements and the Cooperative Agreement Program (CAP). The USMS has identified several geographic locations where they anticipate that local contracts will be insufficient to meet their pretrial detention requirements. For these locations, the USMS has requested that the Bureau of Prisons provide detention facilities through the construction of new Metropolitan Detention Centers and the expansion or establishment of detention units at existing Federal prisons. The Bureau of Prisons has revised its 5 year facilities expansion plan to incorporate all such detention requirements identified by the USMS.

The Bureau of Prisons again seeks authority to test a prison leasing program in which private financing would be used to develop and construct prisons. The prisons would be leased to the Department on an annual basis and would be staffed and managed by the Bureau of Prisons. This alternative could reduce the outlays required in our expansion program over the next few years. For 1990, the Bureau of Prisons proposes a pilot test of the prison leasing concept for the development of two new Federal Correctional Institutions.

COST EFFECTIVE APPROACHES TO CAPACITY EXPANSION

We recognize that the prison expansion program required to meet our objectives is an undertaking of substantial dimensions, in terms of both human and financial resources. It is equally clear that failure to achieve these objectives can result in greater prison overcrowding and could seriously jeopardize the lives and safety of Bureau of Prisons staff and inmates. This type of a crisis would invite court intervention and the establishment of prison population "caps", ultimately leading to a "gridlock" in the Federal criminal justice system. This scenario has occurred in several State correctional systems.

I want to assure you and the members of this Committee that we will meet our mission in the most cost-effective manner possible. We continue to make maximum use of half-way houses, contract detention and other community options, and to expand capacity at existing institutions where possible. However, it is clear to me that public safety dictates that most of our expansion needs will require construction of new Federal prison facilities.

The Bureau of Prisons has taken several actions to insure that new prison construction is as cost effective as possible. These actions include the use of Federal surplus property, the correctional "complex" approach, discussed earlier, and the use of already proven designs and new construction techniques. The design of Federal correctional facilities and use of new security technology are also responsible for prison staffing requirements that are less than occur in most correctional systems.

Another area of prison system expansion which has proved cost effective for us is the use of surplus military facilities. We will work closely with the military regarding potential base realignments and closures. In addition, the Department of Defense has recently shown increased receptivity to the concept of establishing Federal Prison Camps on active military bases. This is an important development since this approach is a very cost-effective method of obtaining space for minimum security Federal offenders.

SALARIES AND EXPENSES

As construction of new prisons and housing units is completed, activation funding is required to open and operate the facilities. In 1990, we are requesting $45.4 million and 634 positions to open a medium security Federal Correctional Institution at Three Rivers, Texas; five minimum security Federal Prison Camps; and newly constructed housing at six existing institutions. Taken together, these activations will bring 2,680 new prison beds on-line in 1990.

We are requesting $24.5 million to support a projected increase of 6,022 in the inmate population in 1990, from 50,378 to 56,400. As I noted earlier, these estimates have been revised from last year to reflect our current assessment of the impact of the Anti-Drug Abuse Act of 1986 as well as the impact of the U.S. Sentencing Commission's new sentencing guidelines.

Operating the Federal Prison System at more than 50 percent over its design capacity without commensurate personnel increases has placed severe demands on staff. Prison overcrowding is commonly related to an increased potential for inmate idleness, inmate violence and inmate litigation. Insufficient staffing can seriously compromise the security of our Federal prisons, endangering life and property. Recognizing this, the President requested and the Congress approved an additional 1,600 positions in 1989. Our 1990 request includes 1,500 positions and $22.5 million to continue to improve staffing in critically understaffed programs for which workload has increased in direct proportion to increases in inmate population.

The Bureau of Prisons continues to expand the use of contracts with State and local agencies for short term and special offender cases and with half-way house contractors. We are requesting an increase of $7.2 million for State and local contracting and $2 million for half-way houses to increase the average annual population in these programs by approximately 900 inmates.

In addition, the 1990 budget includes a request of $1.5 million to conduct a "pilot" prison privatization project by contracting with a private sector firm to house 250 short-term sentenced aliens. We believe that private detention companies may be a useful option for housing some specialized inmate populations.

The next item of our 1990 request, Mr. Chairman, addresses the financial well being of Federal Prison Industries, Inc. (FPI). As you know, FPI is not only a wholly-owned Government corporation, manufacturing and selling a variety of products to Federal agencies, it is also a correctional program vitally important to the effective management and operation of our prisons. The ability to keep increasing numbers of inmates employed and productive has been a critical factor in our ability to successfully manage prison overcrowding. In this context, it is essential that the Corporation remain financially solvent in the years ahead.

As the growth in inmate population continues, the Corporation, like any other business, cannot fund the required scale of physical plant expansion from retained earnings. This issue has partially been addressed in the approval of loan authority for the Corporation in the current fiscal year. To further insure the financial stability of Federal Prison Industries in the future, we are proposing the transfer of funding for vocational training expenses and inmate performance pay from the Federal Prison Industries account to the Salaries and Expenses appropriation in 1990.

A substantial portion of the vocational training expenses previously had been transferred from FPI to Salaries and Expenses with Congressional support and approval. Inmate performance pay, currently funded by the Corporation, is not for inmates employed by Federal Prison Industries but for payments to inmates who work in other prison areas such as food service and maintenance. In virtually every State correctional system, these types of expenses are paid from appropriated funds. Approval of these transfers, which will increase Salaries and Expenses by $16.7 million and 97 positions, will play an important role in maintaining the future financial soundness of the Corporation.

To complete our request for Salaries and Expenses, we are requesting $3.2 million to finance increased use of SENTRY, our inmate management information system, due to the increased inmate population; and $11 million to finance replacement equipment and inventory for the reactivation of the Atlanta Penitentiary and the Oakdale Federal Detention Center.

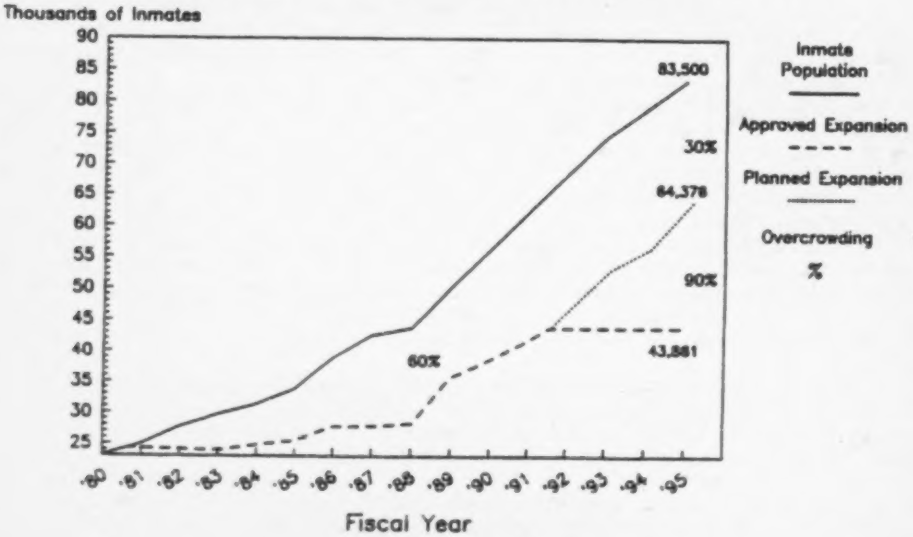
NATIONAL INSTITUTE OF CORRECTIONS

Finally, Mr. Chairman, I want to note that the National Institute of Corrections continues its role as an important force for improvements in State and local correctional agencies through its training and technical assistance services. The Institute's National Academy of Corrections has trained thousands of correctional officers and administrators from all over the nation. The Institute has retained its effectiveness partly because it has remained small and is able to respond directly and promptly to State and local needs. For 1990 we are requesting $10,112,000 and 49 positions for the Institute.

This concludes my prepared statement Mr. Chairman and I would be pleased to answer any questions you or your colleagues may have.

FEDERAL BUREAU OF PRISONS

COMPARISON OF PROJECTED INMATE POPULATIONS WITH APPROVED AND PLANNED EXPANSION PROGRAMS



STATEMENT OF RICHARD B. ABELL

Mr. Chairman and Members of the Subcommittee: I am pleased to have the opportunity to appear before you in support of the 1990 budget request for the Office of Justice Programs. The amended request for the Justice Assistance appropriation is for $246,253,000 and 324 positions, which represents a net decrease of $70,722,000 and 10 positions from the 1989 anticipated appropriation of $316,975,000, that provided for 334 positions.

Before I address the details of our request, I am happy to note that the 1990 budget amendments recently announced by President Bush include funding to continue the State and local drug grant program at the 1989 level. His proposal recognizes the need for a combined Federal, State and local effort to success fully fight the scourge of drugs. Although funding for the Anti-Drug Abuse grant program is being requested at the same level as the 1989 appropriation, it should be noted that the Anti-Drug Abuse Act of 1988 raises the matching requirement for 1990 from 25 percent to 50 percent. Thus, the total amount of funds which will be available for the war on drugs will actually increase by $30 million.

Included in this request is a net mandatory increase of $8,725,000 for various adjustments to base, an increase of $67,000 and one position for the Bureau of Justice Statistics, an increase of $37,000 and one position for the National Institute, and program increases of $2,000,000 for Research, Evaluation and Demonstration Programs, $1,417,000 for Criminal Justice Statistical Programs, and $1,000,000 for the Public Safety Officers' Benefits program. A decrease of $3,497,000 is included for the State and Local Assistance program, and decreases of $76,800,000 are requested to terminate funding for the Regional Information Sharing System and the Juvenile

Justice Programs. A decrease of $3,671,000 and 16 positions for Management and Administration is associated with program terminations and A-76 reductions.

The National Institute of Justice conducts the core research program of the Federal Government concerning the causes and correlates of crime. We are requesting a total of $24,691,000,which is an increase of $2,000,000. This increase is for the development of an effective less-than-lethal weapon. Such a weapon will serve as an alternative to the standard handgun used by law enforcement officers and would save the lives of many law enforcement officers, innocent civilians and suspects.

The sum of $22,449,000 is requested for the Bureau of Justice Statistics. The requested amount is $1,417,000 more than the base. This Bureau is the primary Federal agency to collect, analyze, and disseminate criminal justice data. The National Crime Survey, which is the principal source of information on criminal victimization, is the largest statistical series maintained by the Bureau. Of the requested increase, $476,000 would fund the first year of a 2-year implementation stage of the redesigned National Crime Survey, and $606,000 would fund the National Jail Census and Survey, which is conducted every 5 years. This is the only nationwide statistical series conducted on jail facilities, staffing, services, and inmates. The series provides essential information about the number of inmates held in jails, as well as the patterns of drug and alcohol abuse and the criminal careers of the inmates. The balance of the increase, $335,000, will permit expansion of the Federal integrated data base. This will allow cases to be tracked through the Federal criminal justice system, from arrest through sentencing.

The Anti-Drug Abuse Act of 1988 significantly increased the entitlements provided under the Public Safety Officers' Benefits program. A survivor of an officer killed in the line of duty will now receive a basic benefit of $100,000 instead of $50,000 and, in addition, the benefit will be adjusted each year by the increase in the Consumer Price Index for the past year. The requested increase of $1,000,000 will provide sufficient funds to pay eligible claims in 1990 at the higher benefit level.

The Anti-Drug Abuse Act of 1988 incorporates the purposes of the State and Local Assistance program into the Anti-Drug Abuse program. Since the State and Local Assistance program is no longer authorized separately, the requested decrease of $3,497,000 simply terminates the program as a line item in the budget, but would allow many elements of the program to be continued under a Unified Grant Program.

Termination of the Juvenile Justice program is requested, which represents a reduction of $63,800,000. Under this program over $1 billion in Federal funds has been made available to the States and localities over the past 15 years. These funds have not required matching by the States or localities like most other grant-in-aid programs. It is our hope that States and localities will examine the various programs that have been supported with these funds, and then they can determine which programs are working well enough to deserve continuation with State or local moneys. State laws and policies on the treatment of juveniles have evolved markedly since passage of the Juvenile Justice Act of 1974. We believe that the impact of any additional funds made available for this program will be marginal.

A reduction of $13,000,000 for the Regional Information Sharing Systems is requested. Although we believe, and in fact I have stated before the House Appropriations subcommittee, that these programs are of great value, we have a problem of priority. Uniquely Federal responsibilities must come before State and local programs. There simply are not enough available resources to fund this type program as well as Federal requirements. We hope that the systems will be able to solicit sufficient resources from the users to cover their costs.

The President's budget assumes favorable Congressional action on a proposal to rescind the $5,000,000 appropriated in 1989 for the Mariel Cuban Program. There is an urgent need to finance statutory supplemental costs for the Public Safety Officers' Benefits program, and to start up the process of establishing eligibility for the Japanese reparation. In order to stay within the budget agreement between the Congress and the Administration it is necessary to propose areas of decrease to fund any supplemental requests. The Mariel Cuban program is of less priority than the supplemental requests. In 1988 grants went to 38 States and only 2 States received more than $400,000.

The request for Management and Administration includes an increase of one position for the Bureau of Justice Statistics to allow them to support the expanded Federal integrated data base function, and one position for the National Institute of Justice to conduct major development work for the less-than-lethal weapon program. A decrease of 16 positions and $2,654,000 is proposed for the Office of Juvenile Justice and Delinquency Prevention due to the proposed termination of the Juvenile Justice programs and A-76 savings. The request for the Bureau of Justice Assistance represents a net decrease of $1,017,000 and a net increase of four positions. The decreases are for A-76 savings and program terminations, and the increase in positions is for administering the Anti-Drug Abuse program.

Finally, the amended budget request for the Crime Victims Fund, which is financed by Federal criminal fines, bond forfeitures, and penalty assessments, shows an anticipated level of collections at $125,000,000. I am delighted to report that the recent increases in criminal fines are expected to result in 1989, 1990 and 1991 collections that exceed the cap of $125,000,000.

This concludes my statement, Mr. Chairman. I shall be happy to answer any questions you or other members of the Subcommittee may have.

1990 FUNDING ADEQUACY

Senator HOLLINGS. Mr. Attorney General, you are the first Attorney General we have had around here in a long time that we haven't been trying to catch.

I thought in that light, since we are all on the same side for a change, tell us about the Department of Justice. Have you got everything you need in that detailed statement you made or, to put it bluntly, what was knocked out by OMB?

Before you respond, I will make part of the record a letter received 2 days ago from Thomas Boyd, in response to my request of January 20, 1989, for a budget history for fiscal year 1990.

[The letter follows:]

LETTER FROM THOMAS M. BOYD, ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGISLATIVE AFFAIRS, DEPARTMENT OF JUSTICE

FEBRUARY 21, 1989.

Hon. ERNEST F. HOLLINGS,
Chairman, Subcommittee on Appropriations for the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies, Committee on Appropriations, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This responds to your January 20, 1989 request to the Attorney General for a complete history of the Department of Justice's fiscal year 1990 budget estimates. Your request specified that we should provide the requests of the agencies to the Department, the Department's request to the Office of Management and Budget and the amounts requested in President Reagan's budget. More detailed information was requested for the Office of Justice Programs.

As you know, the 1990 requests received in the Department and sent to the Office of Management and Budget were submitted before the Congress acted on the 1989 budget. Adjustments were made late in the process because of the need to generate a revised 1990 budget base in line with final Congressional action on our 1989 appropriations and the supplemental appropriations for 1989 that accompanied the Anti-Drug Abuse Act of 1988. It should also be noted that the requests prepared by individual components do not necessarily address the problem of integrating the various administration of justice functions into a well-balanced package. Furthermore, neither the departmental components nor the Department itself are in a position to address the overall budget priorities of the Administration or the problem of meeting the deficit reduction targets.

You should note that President Bush's recent proposals to add $150 million to the Office of Justice Programs for drug grants and the $5 million increase in the Drug Enforcement Administration for foreign operations have not been included in the tabular material because no budget amendments have yet been transmitted by the Administration. Furthermore, we have omitted the reestimate of Crime Victims Fund receipts from the tabulation. These receipts are estimated to increase from $90 million to the statutory limit of $125 million.

In its recent document "Building a Better America," the Administration addresses the need for further negotiations on a flexible freeze. At this point, we cannot predict whether these negotiations will increase or decrease other pending requests.

A very recent decision by the Administration to seek new budget authority for the Department of Justice in 1990 to address fraud and embezzlement in the savings and loan industry is also omitted. We understand that the Administration plans to send up amendments totaling almost $50 million to fund 660 positions and other expenses of the Federal Bureau of Investigation, the United States Attorneys, the Criminal Division, and the Tax Division. We understand that the requested 1990 amendments will build on supplemental appropriation requests for 1989 that may approach $36.8 million.

Sincerely,

THOMAS M. BOYD,
Assistant Attorney General.

APPROPRIATION	1990 ORGANIZATION REQUEST TO THE DEPARTMENT			1990 INITIAL DEPARTMENT REQUEST TO OMB			ADDITIONAL REQUESTS TO OMB ON NOVEMBER 28, 1988 2/			TOTAL DEPARTMENT REQUEST TO OMB			1990 PRESIDENT'S BUDGET WITHOUT TRANSFERS			1990 REQUEST TO CONGRESS		
	POS.	FTE	AMOUNT	POS.	FTE	AMOUNT	POS.	FTE	AMOUNT	POS.	FTE	AMOUNT	POS.	FTE	AMOUNT	POS.	FTE	AMOUNT
FEDERAL PRISON SYSTEM:																		
SALARIES AND EXPENSES	16,537	15,632	1,171,290	16,493	15,617	1,182,688	...	...	2,105	16,493	15,617	1,184,793	17,489	16,037	1,153,720	17,471	16,019	1,152,354
NATIONAL INSTITUTE OF CORRECTIONS	50	50	17,095	50	50	19,328	...	...	2	50	50	19,330	49	49	10,112	49	49	10,112
BUILDINGS AND FACILITIES	247	208	575,356	267	229	782,047	...	...	3	267	229	782,050	262	242	401,332	262	242	401,332
FEDERAL PRISON INDUSTRIES	0	1,392	0	0	1,392	0	...	...	...	0	1,392	0	0	1,404	0	0	1,404	0
COMMISSARY FUND	0	171	0	0	171	0	...	...	...	0	171	0	0	196	0	0	196	0
TOTAL, FEDERAL PRISON SYSTEM	16,834	17,453	1,763,741	16,810	17,459	1,984,063	0	0	2,110	16,810	17,459	1,986,173	17,800	17,928	1,565,164	17,782	17,910	1,563,798
OFFICE OF JUSTICE PROGRAMS:																		
NATIONAL INSTITUTE OF JUSTICE	0	0	29,491	0	0	24,891	...	...	...	0	0	24,891	0	0	24,891	0	0	24,891
BUREAU OF JUSTICE STATISTICS	0	0	22,452	0	0	23,892	...	...	...	0	0	23,892	0	0	22,449	0	0	22,449
STATE AND LOCAL ASSISTANCE	0	0	3,500	0	0	3,600	...	...	...	0	0	3,600	0	0	0	0	0	0
STATE AND LOCAL DRUG GRANTS	0	0	175,000	0	0	170,000	...	...	79,000	0	0	255,000	0	0	0	0	0	0
EMERGENCY ASSISTANCE	0	0	0	0	0	0	...	...	...	0	0	0	0	0	0	0	0	0
OJJDP	0	0	12,000	0	0	12,500	...	...	...	0	0	12,500	0	0	0	0	0	0
MISSING CHILDREN	0	0	4,000	0	0	4,200	...	...	...	0	0	4,200	0	0	4,200	0	0	4,200
PSOB	0	0	10,000	0	0	10,000	...	...	...	0	0	10,000	0	0	25,000	0	0	25,000
MARIEL CUBANS	0	0	5,000	0	0	5,000	...	...	...	0	0	5,000	0	0	0	0	0	0
RISS GRANTS	0	0	12,000	0	0	12,000	...	...	...	0	0	12,000	0	0	0	0	0	0
MANAGEMENT & ADMINISTRATION	310	298	21,161	327	335	24,200	...	...	1,400	327	335	25,600	310	310	19,913	310	310	19,913
TOTAL, OFFICE OF JUSTICE PROGRAMS	310	298	294,604	327	335	295,343	0	0	80,400	327	335	375,743	310	310	98,253	310	310	98,253
SUBTOTAL, DIRECT AUTHORITY	84,245	85,009	7,830,353	81,022	80,370	7,317,782	1,292	1,533	170,522	82,914	81,903	7,488,304	75,914	78,378	6,143,920	73,719	78,378	6,162,254
ICC TRANSFER	0	0	0	0	0	0	...	...	...	0	0	0	20	20	1,473	20	20	1,473
U.S. TRUSTEES	0	1,228	74,898	0	895	64,907	...	...	302	0	895	65,209	0	895	62,777	0	895	62,777
INDEPENDENT COUNSEL	0	0	3,000	0	0	6,000	...	...	...	0	0	6,000	0	0	6,000	0	0	6,000
JAPANESE INTERNMENT FUND	0	0	0	0	0	0	...	...	500,000	0	0	500,000	0	0	20,000	0	0	20,000
ASSETS FORFEITURE FUND:																		
CURRENT BUDGET AUTHORITY	0	0	...	0	0	...	...	...	...	0	0	0	0	0	100,000	0	0	100,000
PERMANENT BUDGET AUTHORITY	0	0	...	0	0	...	...	...	...	0	0	0	0	0	237,729	0	0	237,729
TOTAL, ASSETS FORFEITURE FUND	0	0	225,000	0	0	216,149	0	0	0	0	0	216,149	0	0	337,729	0	0	337,729
INS USER FEES	0	0	93,000	0	1,524	105,000	...	...	...	0	1,524	105,000	0	1,524	105,000	0	1,524	105,000
IMMIGRATION LEGALIZATION FEES	0	0	72,020	0	721	54,792	...	...	...	0	721	54,792	0	721	54,792	0	721	54,792
INS EXAMINATION FEE	0	0	0	0	0	0	...	504	26,500	0	504	26,500	0	504	26,500	0	504	26,500
CRIME VICTIMS FUND	0	0	90,000	0	0	90,000	...	...	...	0	0	90,000	0	0	90,000	0	0	90,000
TOTAL, DEPARTMENT OF JUSTICE	84,245	86,035	8,087,719	81,022	83,510	7,854,090	1,292	2,037	697,324	82,314	85,547	8,552,014	75,934	80,040	6,846,209	73,739	80,040	6,860,525

1/ Proposed resources for the National Drug Policy Board are included in the 1990 Organization Request and the Department Request to OMB.
2/ Distribution of some later request items is estimated for the General Administration and General Legal Activities appropriations.
3/ Includes resources for Treasury and Coast Guard that are not reflected in the prior columns.

DEPARTMENT OF JUSTICE
1990 APPROPRIATION HISTORY
(DOLLARS IN THOUSANDS)

APPROPRIATION	1990 ORGANIZATION REQUEST TO THE DEPARTMENT			1990 INITIAL DEPARTMENT REQUEST TO OMB			ADDITIONAL REQUESTS TO OMB ON NOVEMBER 25, 1988 2/			TOTAL DEPARTMENT REQUEST TO OMB			1990 PRESIDENT'S BUDGET WITHOUT TRANSFERS			1990 REQUEST TO CONGRESS		
	POS.	FTE	AMOUNT	POS.	FTE	AMOUNT	POS.	FTE	AMOUNT	POS.	FTE	AMOUNT	POS.	FTE	AMOUNT	POS.	FTE	AMOUNT
GENERAL ADMINISTRATION:																		
DEPARTMENT LEADERSHIP 1/	71	73	7,294	71	73	7,737	...	...	136	71	73	7,873	56	58	6,266	56	58	6,266
EXECUTIVE SUPPORT	77	109	7,390	91	125	8,708	...	...	153	91	125	8,861	67	101	7,308	67	101	7,308
OFFICE OF INTELLIGENCE POLICY &										0	0	0						
PROFESSIONAL RESPONSIBILITY	24	24	2,210	24	24	2,390	...	...	42	24	24	2,432	22	22	2,222	42	42	3,654
JUSTICE MANAGEMENT DIVISION	561	562	56,159	578	627	57,571	...	...	3,997	578	627	61,568	510	574	51,334	422	440	45,938
ADMINISTRATIVE REVIEW AND APPEALS	497	523	35,765	509	529	39,440	...	...	693	509	529	40,133	493	510	36,199	493	510	36,199
INTERNATIONAL CULTURAL/FED. OFF. BLDG.	0	0	1,050	0	0	1,050	...	...	10	0	0	1,060	0	0	0	0	0	0
TOTAL, GENERAL ADMINISTRATION	1,230	1,291	109,868	1,271	1,378	116,896	0	0	5,040	1,271	1,378	121,936	1,148	1,271	103,329	1,080	1,166	99,325
OFFICE OF INSPECTOR GENERAL	0	0	0	0	0	0	...	...	...	0	0	0	16	3	2,000	290	324	19,432
WORKING CAPITAL FUND	0	612	0	0	594	0	...	...	...	0	594	0	0	570	0	0	576	0
U.S. PAROLE COMMISSION	131	128	9,880	131	128	10,747	...	...	(29)	131	128	10,718	131	126	10,336	131	126	10,335
GENERAL LEGAL ACTIVITIES:																		
SOLICITOR GENERAL	49	54	4,006	49	54	4,485	...	...	8	49	54	4,493	49	54	4,485	49	54	4,485
TAX DIVISION	699	671	46,318	675	637	46,748	...	...	959	675	637	47,707	660	631	43,221	646	631	42,080
CRIMINAL DIVISION	945	877	67,300	846	751	59,670	...	...	144	846	751	59,814	777	716	57,098	771	716	56,434
CIVIL DIVISION	1,056	1,030	121,361	962	906	105,253	...	...	(104)	962	906	105,149	949	897	99,010	949	897	99,010
LAND AND NATURAL RESOURCES DIVISION	464	641	42,356	445	602	42,192	...	...	295	445	602	42,487	386	588	37,721	386	588	37,721
OFFICE OF LEGAL COUNSEL	38	41	3,020	38	41	2,328	...	...	(8)	38	41	2,320	39	42	2,020	39	42	2,026
CIVIL RIGHTS DIVISION	416	440	27,937	419	420	29,332	...	...	105	419	420	29,437	405	433	32,100	405	433	32,100
INTERPOL-USNCB	84	84	5,547	78	74	5,647	...	...	200	78	74	5,847	79	76	5,751	79	76	5,761
LEGAL ACTIVITIES OFFICE AUTOMATION	0	0	29,700	0	0	27,096	...	...	0	0	0	27,096	0	0	12,100	0	0	12,100
SPECIAL COUNSEL	51	44	3,430	37	29	2,954	...	...	(5)	37	29	2,949	33	27	2,040	33	27	2,040
TOTAL, GENERAL LEGAL ACTIVITIES	3,830	3,888	354,204	3,549	3,514	326,303	0	0	1,596	3,549	3,514	327,899	3,437	3,441	297,032	3,417	3,441	296,269
ANTITRUST DIVISION	540	571	48,715	549	571	50,232	...	...	(101)	549	571	50,131	544	528	47,222	564	528	47,222
FOREIGN CLAIMS SETTLEMENT COMMISSION	7	5	472	7	7	458	...	...	27	7	7	485	7	7	440	7	7	440
U.S. ATTORNEYS	7,005	6,616	478,435	7,206	6,593	488,254	807	673	16,169	8,013	7,266	504,423	6,774	6,893	486,607	6,185	6,893	449,279
DEBT COLLECTION	0	0	10,000	0	0	10,000	...	...	...	0	0	10,000	0	0	5,000	0	0	5,000
U.S. MARSHALS	3,765	3,726	318,416	3,437	3,278	289,650	124	124	17,157	3,561	3,402	306,807	3,154	3,202	232,403	3,100	3,100	220,046
SUPPORT OF U.S. PRISONERS	0	0	161,396	0	0	189,828	...	...	...	0	0	189,828	0	0	147,034	0	0	147,034
FEES AND EXPENSES OF WITNESSES	0	0	59,679	0	0	56,704	...	...	...	0	0	56,704	0	0	56,704	0	0	56,704
COMMUNITY RELATIONS SERVICE	100	156	30,111	116	120	29,027	...	...	(29)	116	120	28,998	116	120	29,009	116	120	29,009
ORGANIZED CRIME DRUG ENFORCEMENT	0	0	0	0	0	0	...	...	...	0	0	0	0	0	0	0	0	214,321
FEDERAL BUREAU OF INVESTIGATION	25,590	25,510	1,631,019	24,907	24,857	1,700,031	...	...	76	24,907	24,857	1,700,107	22,271	22,829	1,657,435	21,634	22,829	1,505,048
DRUG ENFORCEMENT ADMINISTRATION	7,072	6,303	647,049	6,363	6,061	724,868	221	221	23,050	6,584	6,282	747,918	6,105	5,912	615,047	5,409	5,896	548,101
IMMIGRATION AND NATURALIZATION SERVICE	17,650	16,768	1,215,798	16,647	15,477	1,017,498	80	515	22,907	16,727	15,992	1,040,405	14,021	13,416	882,058	13,792	13,203	866,490

1990 FUNDING ADEQUACY

Mr. THORNBURGH. Well, I would say this, Mr. Chairman. One proceeds at great hazard by saying at any point in time that you have everything that you need, but I think the process of development of this budget request has given due consideration to the needs of the Department of Justice, and during this transition period, we constantly have attempted to fine tune the original budget request, and we are satisfied that what is set forth in the document before you is an adequate charter for us to conduct our activities during fiscal 1990.

Senator HOLLINGS. So you are pleased with it all the way around?

Mr. THORNBURGH. I am.

Senator HOLLINGS. As best we can in public office, we are all trying to constrain. But you essentially got through your major request. You don't have any major disappointment in any part of it, do you?

Mr. THORNBURGH. That's absolutely correct, and I would be remiss if I didn't note the generous funding that has been given by the Congress to the Department throughout the 1980's. You and we agree on the priority needs of law enforcement functions, and that's reflected in the funding patterns during this decade.

Senator HOLLINGS. As an example, we all, in a bipartisan fashion, passed the omnibus drug bill, with an authorization of $3.5 billion. But, we were only able to find one-half billion, or $500 million. Yet, in the request before us now, you are only asking for $1 billion more. So we are still $2 billion shy from what was determined to be the need last year. That is why I asked the question I do.

Is that restriction of some $2 billion the result of budgetary restraints? If we are going to have this war on drugs, if we are going to have this drug czar, then we don't want the drug czar or somebody else running around later saying, "Well, you know, we were restricted" when we have already approved, in an authorized fashion, the higher amount. I just wondered about that.

Mr. THORNBURGH. Let me just make one comment in that regard, Mr. Chairman, and that is that my understanding is that the shortfalls, while having some impact on the enforcement side, were largely in those programs that were to deal with the demand side of the drug equation, and in that respect, it may well have been providential.

This is a somewhat gratuitous comment, but I think the charge given to the so-called drug czar to fashion a specific strategy to deal with the problems of education and rehabilitation and treatment and other things designed to reduce consumption of drugs may well provide a better basis for making that funding available rather than the basis that existed before his overall coordinating functions were established.

Sooner or later, obviously, there is going to have to be a need to fully fund programs in both enforcement and on the demand side, but from the Department of Justice's point of view, from the law enforcement community's point of view, any residual shortfalls following the supplemental appropriation are not particularly troublesome.

INCARCERATION FUNDING

Senator HOLLINGS. We find that the Bureau of Prisons, Mike Quinlan, and the Immigration Service, Allan Nelson, are doing a good job now, in stepping up the availability of detention space. We have all seen the needs in the early news last week. We are going after the criminal aliens and what-have-you. This brings me to Oakdale down in Louisiana.

We have got a new detention center planned for 340 beds where space for at least 1,000 criminal aliens is needed there, and we don't provide for it. My colleagues from Louisiana and the community down there are very much concerned. Can you give us some help on that one?

Mr. THORNBURGH. Let me try. Obviously, one of the central priorities that the President shares with the Department of Justice is to examine the criminal justice system as a system.

Senator HOLLINGS. Right.

Mr. THORNBURGH. When you frontload it with additional investigators and prosecutors and provide for tougher, more effective penalties in the investigation and prosecution particularly of drug offenders, who constitute about 43 percent of the population of our prison system today, you are going to see that downstream consequence of additional needs for incarceration facilities.

Obviously, it would be, in an optimum situation, desirable to fully fund all of that immediately, but I think what is represented in the budget request before you is the beginning of a sizable but phased-in process of bringing our prison facilities up to capacity to enable us to provide the kinds of lodging that are constitutionally sound and humane; at the same time, providing no excuse for our not proceeding aggressively against serious criminal offenders.

In every case that is set forth in the budget request that contemplates additional funding for prison facilities, I would certainly not want to leave the impression that that is all there is. Ideally, as I noted, we would have a considerably greater bite, but under the fiscal constraints that exist, we think this is a responsible plan to begin the phasing in of needed additional capacity.

ALLOCATION OF U.S. ATTORNEYS

Senator HOLLINGS. One other question and then I want to yield to my colleague. On the allocation of the new U.S. attorneys, I noticed the allocation is a sort of geographical distribution without regard to the need: North Dakota, one U.S. attorney; South Dakota, one U.S. attorney; Iowa has got a north and southern division, so they get two. South Carolina, where they are flying drugs in from Colombia and Cuba and all around regularly from Latin America, they get one new attorney position.

We have got 20 times the drug activity, and we are shortchanged. We have had to beef up the DEA and everything, but we don't have the U.S. attorneys to follow through. Somehow that allocation ought to be readjusted as to, like duck hunting, we go where the ducks are. We have got to put the U.S. attorneys where the drugs are.

Mr. THORNBURGH. Let me just briefly address that.

Senator **Bumpers**. You say they don't have any drugs; you have them all in South Carolina.

Mr. **Thornburgh**. That is an admission against interest.

Senator **Hollings**. Well, everybody knows it. We try to run them back down to Florida. [Laughter.]

Mr. **Thornburgh**. You seem to have done a pretty good job.

Senator **Hollings**. They are running them back up to South Carolina now. We can't get to them, and we are not trying cases like we should. The allocation is faulty. I believe you would agree.

Mr. **Thornburgh**. Let me give you the basis for the allocation, Mr. Chairman, and agree with you not necessarily that it is faulty, but that it is going to have to require constant review and monitoring. There are two bases that were used for the allocation of the much-needed increase in assistant U.S. attorneys. This was done in connection with the U.S. Attorneys Advisory Committee. The chairman, Robert Ulrich, is here this morning and worked with the Executive Office of U.S. Attorneys to try to effect an equitable allocation of these additional spots.

The first was statistical, looking at the caseload, looking at the types of cases that were being handled, the number of judges, the number of grand jury stays, all of the traditional indicators.

The second was to ensure that we didn't create inadvertently any safe havens for illegal activity, and that accounts for the presence of one assistant U.S. attorney in North and South Dakota, the feeling there being that if we were to send a signal that these were places where enforcement was going to fall short, that we might, indeed, find that some of those South Carolinians were moving there.

Senator **Hollings**. You can't fly a plane up there to North Dakota.

Mr. **Thornburgh**. I don't want to let anybody have the opportunity to try it.

Senator **Hollings**. You can't go up the Mississippi to South Dakota. [Laughter.]

Mr. **Thornburgh**. That I will agree with.

Senator **Hollings**. I have got I-95 going through, north to south, and we can really stop drug trafficking, put a stop to it once and for all. And the State is doing the best it can. In fact, last fall the State, by popular vote, passed a statewide grand jury system on drugs. We have done so much, but we don't have the U.S. attorneys on the Federal side to follow it up.

Mr. **Thornburgh**. Let me assure you that those will be monitored.

Senator **Hollings**. Yes; please review and monitor that, and for the record I will insert this chart displaying the allocations of the U.S. attorneys.

Mr. **Thornburgh**. We will review and monitor.

[The information follows:]

ALLOCATIONS OF DRUG BILL POSITIONS

10-Jan-89 02:20 PM

District	ROUND 1 AFF/CE ATTY. ALLOC.	AFF/CE FTP SUPPORT ALLOC.	ROUND 1 OCDETF/ NARC ATTY ALLOC.	ROUND 2 TOTAL ATTY. ALLOC.	ROUND 2 TOTAL DRUG SUPPORT DIRECT & OTHER	ALL ROUNDS TOTAL ATTY. ALLOC.	ALL ROUNDS TOTAL SUPPORT ALLOC.	REVISED TOTAL AUSAs	REVISED TOTAL SUPPORT
ALABAMA MIDDLE	1	1	1	1	2	3	3	12	17
ALABAMA NORTHERN	2	2	2	1	3	5	5	32	40
ALABAMA SOUTHERN	1	1	1	0	2	2	3	12	15
ALASKA	1	1	1	1	2	3	3	12	15
ARIZONA	3	3	0	1	3	4	6	58	66
ARKANSAS EASTERN	1	1	1	0	1	2	2	18	21
ARKANSAS WESTERN	1	1	1	0	2	2	3	9	11
CALIFORNIA CENTRAL	8	8	5	8	9	21	17	138	148
CALIFORNIA EASTERN	2	2	1	2	3	5	5	38	47
CALIFORNIA NORTHERN	3	3	2	1	3	6	6	64	71
CALIFORNIA SOUTHERN	3	3	1	2	4	6	7	69	76
COLORADO	1	1	1	0	2	2	3	32	39
CONNECTICUT	2	2	2	2	4	6	6	31	35
DELAWARE	1	1	0	1	1	2	2	9	14
DISTRICT OF COLUMBIA	2	2	3	23	26	28	28	233	196
FLORIDA MIDDLE	5	5	3	4	7	12	12	61	72
FLORIDA NORTHERN	3	3	1	1	3	5	6	22	25
FLORIDA SOUTHERN	12	12	12	18	18	42	30	145	151
GEORGIA MIDDLE	1	1	1	1	1	3	2	14	20
GEORGIA NORTHERN	3	3	2	0	2	5	5	45	56

ALLOCATIONS OF DRUG BILL POSITIONS

10-Jan-89
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District	ROUND 1 AFF/CE ATTY. ALLOC.	AFF/CE FTP SUPPORT ALLOC.	ROUND 1 OCDETF/ NARC ATTY ALLOC.	ROUND 2 TOTAL ATTY. ALLOC.	ROUND 2 TOTAL DRUG SUPPORT DIRECT & OTHER	ALL ROUNDS TOTAL ATTY. ALLOC.	ALL ROUNDS TOTAL SUPPORT ALLOC.	REVISED TOTAL AUSAs	REVISED TOTAL SUPPORT
GEORGIA SOUTHERN	1	1	1	0	2	2	3	16	22
GUAM	0	0	0	1	2	1	2	5	7
HAWAII	2	2	0	1	1	3	3	17	24
IDAHO	1	1	1	0	1	2	2	12	18
ILLINOIS CENTRAL	1	1	1	1	2	3	3	18	22
ILLINOIS NORTHERN	4	4	2	3	4	9	8	101	115
ILLINOIS SOUTHERN	1	1	2	1	4	4	5	16	21
INDIANA NORTHERN	1	1	1	1	2	3	3	20	27
INDIANA SOUTHERN	1	1	1	1	1	3	2	22	27
IOWA NORTHERN	1	1	1	1	1	3	2	11	14
IOWA SOUTHERN	1	1	1	0	1	2	2	12	16
KANSAS	1	1	0	3	4	4	5	22	29
KENTUCKY EASTERN	1	1	1	0	1	2	2	22	32
KENTUCKY WESTERN	2	2	2	0	1	4	3	19	24
LOUISIANA EASTERN	1	1	1	1	2	3	3	33	40
LOUISIANA MIDDLE	1	1	1	1	3	3	4	10	13
LOUISIANA WESTERN	1	1	1	0	1	2	2	21	28
MAINE	1	1	1	0	3	2	4	12	15
MARYLAND	2	2	2	2	3	6	5	44	53
MASSACHUSETTS	2	2	2	0	1	4	3	49	57

ALLOCATIONS OF DRUG BILL
POSITIONS

District 10-Jan-89 02:20 PM	ROUND 1 AFF/CE ATTY. ALLOC.	AFF/CE FTP SUPPORT ALLOC.	ROUND 1 OCDETF/ NARC ATTY ALLOC.	ROUND 2 TOTAL ATTY. ALLOC.	ROUND 2 TOTAL DRUG SUPPORT DIRECT & OTHER	ALL ROUNDS TOTAL ATTY. ALLOC.	ALL ROUNDS TOTAL SUPPORT ALLOC.	REVISED TOTAL AUSAs	REVISED TOTAL SUPPORT
MICHIGAN EASTERN	3	3	3	2	4	8	7	67	74
MICHIGAN WESTERN	1	1	2	0	2	3	3	19	28
MINNESOTA	1	1	0	2	1	3	2	25	35
MISSISSIPPI NORTHERN	1	1	1	1	2	3	3	12	17
MISSISSIPPI SOUTHERN	2	2	1	0	1	3	3	18	24
MISSOURI EASTERN	1	1	1	2	2	4	3	30	35
MISSOURI WESTERN	2	2	3	0	3	5	5	30	36
MONTANA	0	0	0	1	2	1	2	10	14
NEBRASKA	1	1	0	0	1	1	2	14	17
NEVADA	2	3	2	0	3	4	5	24	28
NEW HAMPSHIRE	1	1	0	0	0	1	1	8	11
NEW JERSEY	2	2	2	3	5	7	7	74	82
NEW MEXICO	2	2	0	1	4	3	6	27	31
NEW YORK EASTERN	8	8	3	5	8	16	16	95	108
NEW YORK NORTHERN	2	2	2	1	3	5	5	22	27
NEW YORK SOUTHERN	7	7	2	6	6	15	13	144	167
NEW YORK WESTERN	1	1	1	1	2	3	3	24	30
NORTH CAROLINA EASTERN	1	1	0	0	0	1	1	16	23
NORTH CAROLINA MIDDLE	1	1	1	0	0	2	1	10	14

ALLOCATIONS OF DRUG BILL
POSITIONS

10-Jan-89
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District	ROUND 1 AFF/CE ATTY. ALLOC.	AFF/CE FTP SUPPORT ALLOC.	ROUND 1 OCDETF/ NARC ATTY ALLOC.	ROUND 2 TOTAL ATTY. ALLOC.	ROUND 2 TOTAL DRUG SUPPORT DIRECT & OTHER	ALL ROUNDS TOTAL ATTY. ALLOC.	ALL ROUNDS TOTAL SUPPORT ALLOC.	REVISED TOTAL AUSAs	REVISED TOTAL SUPPORT
NORTH CAROLINA WESTERN	1	1	1	0	0	2	1	11	18
NORTH DAKOTA	1	1	0	1	0	2	1	9	14
OHIO NORTHERN	2	2	2	0	1	4	3	48	60
OHIO SOUTHERN	1	1	1	1	2	3	3	32	39
OKLAHOMA EASTERN	1	1	1	0	0	2	1	7	10
OKLAHOMA NORTHERN	1	1	1	0	1	2	2	12	16
OKLAHOMA WESTERN	2	2	1	0	0	3	2	21	31
OREGON	1	1	1	3	3	5	4	28	34
PENNSYLVANIA EASTERN	3	3	2	1	5	6	8	71	80
PENNSYLVANIA MIDDLE	1	1	2	1	3	4	4	19	22
PENNSYLVANIA WESTERN	1	1	2	0	3	3	4	38	45
PUERTO RICO	1	1	2	0	3	3	4	28	34
RHODE ISLAND	1	1	0	0	1	1	2	11	14
SOUTH CAROLINA	1	1	0	2	2	3	3	31	38
SOUTH DAKOTA	1	1	1	1	2	3	3	14	18
TENNESSEE EASTERN	1	1	1	0	2	2	3	17	21
TENNESSEE MIDDLE	1	1	1	0	1	2	2	14	19
TENNESSEE WESTERN	1	1	2	1	4	4	5	22	28
TEXAS EASTERN	2	2	2	3	6	7	8	23	29

ALLOCATIONS OF DRUG BILL POSITIONS

10-Jan-89 02:20 PM

District	ROUND 1 AFF/CE ATTY. ALLOC.	AFF/CE FTP SUPPORT ALLOC.	ROUND 1 OCDETF/ NARC ATTY ALLOC.	ROUND 2 TOTAL ATTY. ALLOC.	ROUND 2 TOTAL DRUG SUPPORT DIRECT & OTHER	ALL ROUNDS TOTAL ATTY. ALLOC.	ALL ROUNDS TOTAL SUPPORT ALLOC.	REVISED TOTAL AUSAs	REVISED TOTAL SUPPORT
TEXAS NORTHERN	2	2	1	6	5	9	7	48	60
TEXAS SOUTHERN	4	4	2	2	6	8	10	77	83
TEXAS WESTERN	4	4	2	0	4	6	8	52	60
UTAH	1	1	1	0	1	2	2	16	23
VERMONT	1	1	1	0	2	2	3	10	14
VIRGIN ISLANDS	1	1	1	2	3	4	4	13	16
VIRGINIA EASTERN	3	3	2	3	7	8	10	47	61
VIRGINIA WESTERN	1	1	0	1	0	2	1	12	23
WASHINGTON EASTERN	1	1	1	0	3	2	4	11	15
WASHINGTON WESTERN	2	2	0	1	2	3	4	32	40
WEST VIRGINIA NORTHERN	1	1	0	0	0	1	1	10	14
WEST VIRGINIA SOUTHERN	1	1	2	0	1	3	2	19	24
WISCONSIN EASTERN	2	2	1	1	2	4	4	22	26
WISCONSIN WESTERN	1	1	1	0	2	2	3	11	14
WYOMING	1	1	1	0	1	2	2	8	12
TOTAL	171	171	126	139	265	436	436	3046	3586

STAFFING OF KEY POSITIONS

Senator **RUDMAN**. Senator Hatfield has one question he would like to ask.

Senator **HATFIELD**. Thank you, Mr. Chairman, I will refer to our distinguished witness as the Governor.

Mr. **THORNBURGH**. You and I share that mark of Cain, and the chairman, as well and Senator Bumpers.

Senator **BUMPERS**. Just a few were born to rule, I always say.

Mr. **THORNBURGH**. This is a National Governors Association alumni.

Senator **HATFIELD**. Governor, how many of your key positions are unfilled today in the Department?

Mr. **THORNBURGH**. We are in the process of assembling a new management team, Senator, and at present, all of our operating divisions are headed by acting personnel that I chose to fill in during the interim while we recruited, sought White House approval and processed new applicants for those positions.

As a result, a number of those spots are technically vacant, but I can assure you of two things: one, that there is the presence of acting persons of my choosing and two, the process of selecting new replacements has had no negative effect on our operations.

Senator **HATFIELD**. How soon do you expect to have that process complete? Can you make an estimate on that?

Mr. **THORNBURGH**. My understanding is that so far as the Presidential nomination process is concerned, we ought to, within the next 2 weeks, have the majority of those positions selected. Then, of course, it will depend upon the Senate Judiciary Committee's scheduling their confirmation hearings, but we are well along in assembling what I think you will agree, in due course, is a first-class management team for the Department.

VACANT U.S. ATTORNEY POSITIONS

Senator **HATFIELD**. I wouldn't want to, in any way, urge you to accelerate that process. That would be detrimental to achieving the best possible team, but in light of some of the other agencies' slowness in getting their key personnel in place, I would hope that, because you are a reappointment, you could move that right along.

How many of your U.S. attorneys are vacant at this time?

Do you want to provide that for the record?

Mr. **THORNBURGH**. Again, there are no vacancies, as such, in terms that the offices are being shut down. There are a number of interim appointments, court appointments. We are working with individual Senators and with the White House to ensure that we have a process in place to nominate a number of replacements. That will increase, particularly during this year as individuals leave and are replaced. But once again, I would hasten to add that I have seen no harmful effect of any delay.

This is an interesting exception to the normal rule utilized by President Bush of seeking resignations from all Presidential appointments. He did not, and I think wisely, seek such resignations even on a pro forma basis from the U.S. attorneys, because many of them are in the process of conducting investigations that require their personal attention, and it would be a setback for effective law enforcement if that rule were applied.

Nonetheless, as you know, a number of sitting U.S. attorneys have taken the occasion of the change of administration to change their careers. In due course, we will be selecting, I hope, a new, excellent class of local counterparts to our Department people.

Senator **HATFIELD**. Thank you.

Thank you, Senator Rudman. Thank you, Mr. Chairman.

Senator **HOLLINGS**. Thank you, Senator. We will include, at this point in the record, a chart furnished by the Department of Justice with respect to the individuals now holding key positions and those positions which remain vacant.

[The chart follows:]

LETTER FROM HARRY H. FLICKINGER

FEBRUARY 9, 1989.

Mr. WARREN KANE,
Clerk, Subcommittee on Appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies, Committee on Appropriations, U.S. Senate, Washington, DC

DEAR MR. KANE: This responds to your request for a report showing the top level positions in the major components of the Department of Justice, their present occupants, and when they were appointed. Where vacancies exist, you indicated that you wanted to know when the position became vacant. You also indicated that a remarks column would be useful to explain unusual characteristics of various positions and to comment on who may have vacated a position and who the replacement would be, if known.

The enclosure indicates the status of those positions that head important components of the Department.

HARRY H. FLICKINGER,
Assistant Attorney General for Administration.

DEPARTMENT OF JUSTICE

Key Personnel as of February 4, 1989
(Presidential Appointment if no Comment Shown)

Position	Incumbent	Date of Appointment	Vacant Since	Comments
Attorney General	Dick Thornburgh	8-12-88	...	...
Deputy Attorney General	Harold G. Christensen	10-4-88	...	...
Associate Attorney General	Vacant	...	1-27-89	Francis A. Keating II resignation
Solicitor General	Vacant	...	1-20-89	Charles Fried resigned White House has announced intention to nominate Kenneth W. Starr
Assistant Attorney General Legal Counsel	Douglas W. Kmiec	10-17-88	...	New nominee being processed
Assistant Attorney General Legal Policy	Stephen J. Markman	10-18-85	...	...
Counsel for Intelligence Policy	Mary C. Lawton	1-25-82	...	Non-career SES
Counsel on Professional Responsibility	Michael E. Shaheen	2-9-76	...	Career Reserved SES
Assistant Attorney General Legislative Affairs	Thomas P. Boyd	10-17-88	...	...
Director, Office of Liaison Services	Barry H. Stern	10-6-88	...	Non-career SES
Director, Office of Public Affairs	Loye W. Miller, Jr.	9-18-88	...	Non-career SES

Position	Incumbent	Date of Appointment	Vacant Since	Comments
Assistant Attorney General for Administration	Harry H. Flickinger	4-30-87	...	Career Reserved SES
Director, Executive Office for Immigration Review	David L. Milhollan	1-9-83	...	General
Chairman, U.S. Parole Commission	Benjamin F. Baer	3-24-82	...	...
Assistant Attorney General Antitrust Division	Charles F. Rule	7-20-87	...	Publicly announced intention to resign
Assistant Attorney General Civil Division	John R. Bolton	12-17-85	...	Served as Assistant Attorney General in Office of Legislative Affairs prior to moving to Civil Division
Assistant Attorney General Civil Rights Division	Vacant	...	12-9-88	William Bradford Reynolds resignation
Assistant Attorney General Criminal Division	Edward S.G. Dennis,Jr.	10-4-88	...	...
Assistant Attorney General Land & Natural Resources Div.	Vacant	...	1-20-89	Roger J. Marzulla resignation
Assistant Attorney General Tax Division	Vacant	...	1-20-89	William Rose resignation
Director, Executive Office for U.S. Attorneys	Laurence S. McWhorter	10-4-87	...	Career Reserved

Position	Incumbent	Date of Appointment	Vacant Since	Comments
Director, U.S. Marshals Service	Stanley E. Morris	10-25-83	...	Presidential appointment effective with Anti-Drug Abuse Act of 1988. Incumbent is an ES-06.
Director and Counsel Executive Office for U.S. Trustees	Thomas J. Stanton	5-1-83	...	Non-career SES
Chairman, Foreign Claims Settlement Commission	Stanley J. Glod	8 12-88	...	Term expires 9-30-91
Director, Community Relations Service	Grace Flores Hughes	6-16-88	...	Four year term
Director, Federal Bureau of Investigation	William S. Sessions	11-2-87	...	Ten year term
Administrator, Drug Enforcement Administration	John C. Lawn	7-18-86	...	...
Commissioner, Immigration and Naturalization Service	Alan C. Nelson	2-9-82	...	...
Director, Bureau of Prisons	J. Michael Quinlan	7-5-87	...	General
Director, National Institute of Corrections	Vacant	...	1-20-89	Non-career SES - Raymond Brown retired on date shown
Assistant Attorney General Office of Justice Programs	Richard B. Abell	7-2-87	...	...

Career Reserved - position which is required to be filled by a career appointee.

General - Any position; other than a career reserved position, which may be filled by either a career, non-career, limited emergency, or limited term appointee.

BORDER PATROL STAFFING

Senator **Hollings**. Senator Rudman?

Senator **Rudman**. Thank you, Mr. Chairman. I am going to be very brief. I will have a few questions for the record. There are a couple of things that I thought I would ask you about on the record here publicly. On the border patrol staffing, I expect we are going to have to talk about that a bit. I note this decrease of about $10.7 million and 522 positions in your request. I expect that you would agree that they are responsible for about one-half the illegal drugs seized at the border.

Do you really want to do that? I mean, do you really want us to reduce the border patrol by 522 positions? I mean, is that what you are asking us to do?

Mr. **Thornburgh**. Let me, perhaps, truncate my answer a little bit in view of what recent developments—recent since the preparation of the budget request—have indicated. One is that, to the credit of the INS and the border patrol, the step-up in enforcement activities clearly is having a deterrent effect, and does point out that some reduction in the commitment that was made following the passage of the new act in 1986 is appropriate.

What the parameters of that proper reduction are—I wouldn't be prepared to swear to you that the figures set forth are totally satisfactory. But clearly, we have an obligation, an obligation that I take seriously, to manage our resources effectively to ensure that we are targeting our resources in the most effective way possible.

I guess what I can say to you, Senator, is that we will be anxious to reach a figure for that complement that does not hinder in any way the important activities that the border patrol carries out.

Senator **Rudman**. All right.

Mr. **Thornburgh**. Second, obviously, with respect to the events occasioned by the court order entered, and now, thankfully, vacated in south Texas, we have had and Commissioner Nelson has made use of the reallocation of present resources. We would hope that that is something that could be handled within the present year's budget by reprogramming certain INS appropriations. Our greater hope is that this problem will not be one that is recurrent and will carry over into the next fiscal year.

But this is obviously a volatile area. The whole immigration area is one that I expect, in due course, that you and the Congress are going to want to re-examine on a number of fronts, not just the recent influx of Central American refugees, but continuing problems with Soviet emigres and with the Southeast Asian refugees. It is one that we are ready, willing, and, I hope, able to participate in the reexamination of some of these areas.

Senator **Hollings**. On that point I will make part of the record at this point a chart displaying the border patrol staffing.

[The information follows:]

BORDER PATROL AUTHORIZED AND ON DUTY

	FY 1986		FY 1987		FY 1988		FY 1989		FY 1989		FY 1990	
	(September)		(September)		(September 13)		(Jan.3, Est.)		(September, Est.)		(September, Est	
	Auth.	On Duty	Auth.	On Duty	Auth.	On Duty	Auth.	On Duty	Auth.	On Duty	Auth.	On Duty
EASTERN REGIONAL OFFICE	3	3	3	2	3	3	3	3	3	3	3	3
Buffalo Sector	39	37	56	38	56	39	55	39	55	37	47	36
Swanton Sector	71	65	109	67	108	81	105	81	105	79	94	76
Houlton	34	29	52	33	52	40	51	40	51	40	46	38
Puerto Rico	0	0	20	4	20	19	20	19	20	19	20	19
Regional Totals	147	134	240	144	239	182	234	182	234	178	210	172
SOUTHERN REGIONAL OFFICE	6	6	9	8	9	9	9	9	9	9	9	9
El Paso Sector	578	560	808	554	801	553	794	696	794	638	713	600
Marfa Sector	141	151	207	153	205	162	205	198	205	182	184	171
Del Rio Sector	318	331	495	370	491	368	489	472	489	433	439	407
Laredo	260	286	464	284	463	337	461	430	461	394	414	371
McAllen Sector	264	284	414	282	411	348	411	387	411	355	369	333
New Orleans Sector	42	39	53	35	52	41	52	42	52	39	47	36
Miami Sector	73	57	99	54	98	58	98	89	98	83	88	78
Regional Totals	1,682	1,714	2,549	1,741	2,530	1,876	2,519	2,323	2,519	2,132	2,263	2,004

NORTHERN REGIONAL OFFICE	3	1	3	2	3	3	3	3	3	3	3	3
Blaine Sector	32	31	56	32	56	37	55	37	55	36	49	35
Spokane Sector	30	25	54	28	53	37	52	37	52	36	47	35
Havre Sector	31	29	50	32	50	38	49	38	49	37	46	36
Grand Forks Sector	35	28	46	35	47	35	45	35	45	34	40	33
Detroit Sector	26	22	47	25	47	31	45	31	45	30	40	28
Regional Totals	157	136	256	154	256	181	249	181	249	176	224	170
WESTERN REGIONAL OFFICE	7	6	7	9	7	8	7	8	7	8	7	8
San Diego Sector	860	856	1,242	794	1,234	748	1,229	1,011	1,229	927	1,104	871
El Centro Sector	303	300	416	264	414	271	411	374	411	343	369	322
Yuma Sector	239	238	350	223	348	239	345	288	345	264	310	248
Tucson Sector	203	216	377	221	376	320	374	343	374	314	336	296
Livermore Totals	66	62	67	61	67	58	66	72	66	66	59	62
Regional Totals	1,678	1,678	2,459	1,572	2,446	1,644	2,432	2,096	2,432	1,922	2,185	1,807
CENTRAL OFFICE	29	25	37	32	59	42	59	50	59	59	59	59
TOTAL	3,693	3,687	5,541	3,643	5,530	3,925	5,493	4,832	5,493	4,467	4,941	4,212
Positions												
Agents	3,214	3,238	4,822	3,180	4,812	3,353 *	4,812	4,232	4,812	3,917	4,357	3,682
Support	479	449	719	463	718	572	681	600	681	550	584	530
TOTAL	3,693	3,687	5,541	3,643	5,530	3,925	5,493	4,832	5,493	4,467	4,941	4,212

* NOTE: 721 new agents were hired by Sept. 30, 1988 but were not assigned to Sectors until FY 1989.
The total number of agents by the end of the year was 4,074.

DENIAL OF FEDERAL BENEFITS TO DRUG TRAFFICKERS

Senator RUDMAN. All right. The second question I had, on the drug bill, which, of course, we worked on, and I want to thank you for all the cooperation we had from the Department.

Mr. THORNBURGH. Thank you. It paid off, I think, in some dramatic new initiatives.

Senator RUDMAN. We spent the better half of the past 2 months of the last session on that with the people on your staff. The question I have is: What are you doing in terms of your internal organization? Are you starting to analyze some of the things which obviously need analysis? The thing that I am particularly curious about, and it is interesting; Senator Gramm walked in when I asked this question. It is something that he was very involved in, and that is——

Mr. THORNBURGH. I feel particularly flattered to have Gramm, Rudman, and Hollings at the table. It is a grim reminder of our responsibility. [Laughter.]

Senator RUDMAN. If the budget would allow us to bring our license with us, we would, but that is all we are allowed. [Laughter.]

Senator HOLLINGS. And the new pronunciation is very accurate: Grim, Rudman. [Laughter.]

Senator RUDMAN. I will see if I can remember what my question was.

Mr. THORNBURGH. I apologize.

Senator RUDMAN. Sitting in between Senators Gramm and Hollings is always a great experience. I have enjoyed it over the last 8 years.

Senator Gramm had put forth an initiative that had to do with the very thing you were talking about earlier, and that was the whole demand side, if you will, and how we start to revoke certain Federal benefits that people would receive. It was a very, very difficult negotiation to try to get language that we all felt would preserve people's civil liberties, yet would do what we were trying to do.

Is your Department actively involved in trying to advise OMB and the President at this time as to what that listing is going to be? Because my recollection is that somewhere around the first of the year, or the middle of this year, we are supposed to have a plan as to how to implement that section. Is that something you are doing?

Mr. THORNBURGH. We do not have the laboring oar on that, I believe, but maybe one of my colleagues can fill me in. I hear a definite silence back there. [Laughter.]

It was an ominous silence. Let us find out. If we did have the laboring oar, I am sure I would be able to give you an update on it, but my sense is, in particular with regard to the benefit cutoffs, that that is within the initial province of an agency's concern, such as the Department of Labor and HHS.

Senator RUDMAN. Labor-HHS.

Mr. THORNBURGH. But I am sure that for any regulations that go forward, we will have a piece of it.

Senator **Rudman**. Justice would have to be very involved in how those things were going to be formulated, because there are some serious issues there which we will have to grapple with over time.

Mr. **Thornburgh**. There are, and it is an experiment, one that, as you and I agreed, is worthwhile undertaking but it, too, will have to be carefully monitored.

[The information follows:]

Justice Department Role in Benefit Cut-offs Under Drug Bill

Primary responsibility for implementing Sec. 5301 of the Anti-Drug Abuse Act of 1988 (Public Law 100-690), rests with the Office of National Drug Control Policy and Secretary of Health and Human Services. However, the Department is contributing to the preparation of the President's report to the Congress, particularly with regard to determining the means by which law enforcement and other agencies will exchange and share information necessary to implement and enforce the withholding of Federal benefits, including identification of those who are subject to this sanction. Also, as the work of other agencies progress it can be anticipated that the Department will participate in the review of legislative and regulatory recommendations and provide necessary legal advice to OMB and the President.

USE OF RICO STATUTE

Senator **Rudman**. The third question is really not a budget question. It is more of a substantive question, but we have always had no problem asking you those kinds of questions. We ask the Secretary of State those kinds of questions. It is our one chance of the year to talk to you in this very cozy hearing room.

I have heard a lot about the RICO statute and some problems. I watched Rudy Giuliani on the television the other day, and I have heard a lot of debate back and forth. I have some views of my own that maybe it is being used in some places on civil actions that maybe we never intended.

Are you going to be in a position to give us some advice on this soon?

Mr. **Thornburgh**. We certainly will, Senator. It has gotten a lot of attention, and I think some of it has been a reflection of some misunderstanding about the role of the RICO statute. It is, I can attest, a very powerful and effective law enforcement tool, one that I would deeply regret being compromised by tinkering with it.

Senator **Rudman**. I think we agree on that.

Mr. **Thornburgh**. There is, as we have discussed, an appropriate area where a reexamination might take place and that is on the civil side, and we will be developing some recommendations on that score. We are always a little bit hesitant to take a lead role in that, to be perfectly honest with you, for fear of losing what we regard as a legitimate and effective law enforcement tool in the rush to remedy some of the shortcomings on the civil side. I would express my gentle admonition to you and your colleagues to be very careful in parsing out the proposals that are made for change to ensure that we don't hamper law enforcement.

Senator **Rudman**. But you do remember that last fall, that is precisely what almost happened.

Mr. **Thornburgh**. Yes.

Senator **Rudman**. And we had to fight very hard to tell people in the drug agencies, we are not going to change the RICO statute, not in that atmosphere. I guess what I am saying is if there is going to be a thoughtful change of the RICO statute only in terms of its civil applicability—and it seems to me that there may be a reason to change it there—then it ought to be thoughtfully done; it ought to come from Justice with all the expertise you have. It ought to be done in a very calm atmosphere so we don't throw out the baby with the bathwater.

Mr. **THORNBURGH**. We will be outside your door early in the morning when that time comes.

Senator **RUDMAN**. That is a very important question, Mr. Chairman.

Senator **HOLLINGS**. Senator Bumpers?

Senator **BUMPERS**. General, just to pursue what Senator Rudman was talking about on RICO, most of us voted for it around here and were satisfied that we made a giant step and delivered a giant blow against organized crime. My son works for a law firm which represents a brokerage firm. Everybody who loses money nowadays wants to sue the brokerage firm. For example, they can subpoena or in depositions require you to produce all the transactions of a particular stock of that brokerage firm handled in the United States.

For example, he was telling me about a case where they were suing for $100,000; it would have cost them $1 million to produce all the documents under the RICO statute that were going to be required.

Senator Hollings and I certainly don't want to jeopardize this legitimate law enforcement tool, but that is obviously outrageous and being terribly abused, and we need to do something about it.

Mr. **THORNBURGH**. You will get no quarrel from the Department of Justice on that so long as we get our 2 cents worth on retaining a very effective, I think, law enforcement tool.

FBI LIBRARY AWARENESS PROGRAM

Senator **BUMPERS**. Most of my questions are substantive. What is the policy of the FBI with libraries? I have been hearing from my librarians.

Mr. **THORNBURGH**. I am familiar with it, but I would prefer to have the Director of the FBI respond. That has been an item of concern to him and me, and I think it has been adjusted, but I don't want to paraphrase him.

ANTITRUST CASE FILINGS

Senator **BUMPERS**. On antitrust cases, how many cases did you file in 1988?

Mr. **THORNBURGH**. Civil or criminal?

Senator **BUMPERS**. Civil.

Mr. **THORNBURGH**. That, I don't know whether we have a number on that or not.

Senator **BUMPERS**. Submit that for the record. If you will, give me a breakdown on the number of both criminal and civil cases filed for each of the last 3 years.

Mr. **THORNBURGH**. The criminal cases, I know, reached a new all-time high.

Senator **BUMPERS**. In 1988?

Mr. **Thornburgh**. We have been vigilant about price fixing, in particular, those things that directly affect the American consumer are at the top of and will remain at the top of the list of the Antitrust Division, but I will give you as thorough a rundown of the total picture as I can from our Antitrust Division.

[The information follows:]

ANTITRUST CASES

	1985	1986	1987	1988
Civil cases:				
Received/filed	11	6	15	11
Terminated	22	12	10	22
Pending, end of year	19	13	18	7
Criminal cases:				
Received/filed	47	53	92	87
Terminated	71	58	26	30
Pending, end of year	42	37	103	160

WITNESS PROTECTION PROGRAM

Senator **Bumpers**. You reported in 1988 you had 262 new witnesses under the Witness Protection Program, and you are saying in 1990 you anticipate receiving 340 new witnesses. That is a tremendous increase, is it not?

Mr. **Thornburgh**. That is, yes, that is about a 50-percent increase?

Senator **Bumpers**. How do you account for that? Is that because of drugs. Stan Morris is nodding his head yes.

Mr. **Thornburgh**. It is always harder to estimate that kind of figure, but it is an extrapolation based on the increased number of assistant U.S. attorneys which you provided.

One of the problems is, and I think you probably hear it from your U.S. attorneys and their counterparts, is that it doesn't do much good to put a vast, increased force of investigators on the street or to utilize the type of grand jury investigations that are sometimes necessary in these involved cases if, when you obtain the indictments and make the arrests, there is nobody there to try the cases. The increase in numbers of assistant U.S. attorneys is going to vastly enhance their capability in both investigation and prosecution by just extrapolating the current workload of or current inventory of protected witnesses.

I think that figure probably represents a reasonable estimate, but again, it is an important program, as the Senator knows, because frequently, the bigger the defendant's illegal operation is, the more they realize in the way of ill-gotten gains. We had, within the last 48 hours, dramatic reminders of how big a business this drug operation is, the seizure in New York and arrests made in connection with a Chinese organized crime operation, the seizure of heroin with a street value of $1 billion, a record haul, and not 24 hours later, the first takedown in a money-laundering operation, which is the other side of the coin, that may well involve another $1 billion in ill-gotten gains that have been disguised.

When that kind of money is at stake, the drug lords, unfortunately, are prepared to jeopardize the lives and safety of the witnesses and their families, and we have an obligation not only to those persons who come forward to testify, but to the American public, to ensure that they are not only available to testify and help in making these cases but not jeopardized because of their doing so.

AUTOMATIC AND SEMIAUTOMATIC WEAPONS

Senator **Bumpers**. General, that brings me to another question. The drug lords are also prepared to use semiautomatics and automatics like an AK-47 in order to do that. Have you had an opportunity to talk to the President about that?

Mr. **Thornburgh**. I have not. As the Senator knows, we are, pursuant to these requests from the Congress, conducting a study due in November of ways and means in which we can effectively keep weapons out of the hands of felons. That is the basic thrust of what the law enforcement effort should be.

Senator **Bumpers**. What if you are not a felon? Why should Dale Bumpers or anyone else have an AK-47?

Senator **Hollings**. If the Senator would yield, an AK-47 study coming in November is going to be ex post facto. I am confident the Congress will act one way or the other. On the AK-47 semiautomatic around here, we will have an amendment up. The only reason we haven't had it up is we haven't had a bill.

Senator **Bumpers**. It has been hotly contested. I am disappointed in the President's finessing of that issue. I don't think anybody has any use for a weapon that will fire 100 rounds a minute.

Senator **Adams**. Would the Senator yield on that point and save me a question later?

Senator **Bumpers**. Certainly.

Senator **Adams**. General, as a former U.S. attorney I enforced the alcohol, tobacco, and firearms laws. I fired Thompson submachine guns and the various other weapons with the FBI. Isn't an AK-47 or any automatic assault weapon that is fired as an automatic submachine gun automatically interdicted under the Alcohol, Tobacco and Firearms Division?

Mr. **Thornburgh**. Automatic weapons are.

Senator **Adams**. This is an automatic weapon.

Senator **Bumpers**. They come here as semiautomatic, I think.

Senator **Adams**. Thank you for yielding. I won't proceed with that.

Senator **Bumpers**. I won't pursue that, but I think some people would argue that you have a right to go in and demand a 150 Howitzer or an M-1 tank. At some point, this has really gotten ridiculous.

Mr. **Thornburgh**. Certainly, I would agree that the matter has been brought center stage by some of the egregious acts that have occurred.

PRISON POPULATION—DRUG OFFENDERS AND USERS

Senator **Bumpers**. I have two additional questions. On prison population, your projections continue to go higher each year. Last year I think they projected 76,000 by some period and now it is up to 83,000. In any event, a lot of that, I am sure, is drugs. My first question is, in 1981, 25 percent of the inmates in the Federal prisons had been drug abusers. What is that figure in 1988?

Mr. THORNBURGH. About 43 percent are sentenced for drug-related offenses I believe, Senator.

Is that correct?

Mr. QUINLAN. That is correct.

Mr. THORNBURGH. I might just pursue that, there are 43 percent who are drug offenders. There is also a statistic that indicates that 40 percent of the prison population have moderate to serious substance abuse problems.

That is not the same; the 43 and 40 percent are not the same people. There are a lot of people in prisons today who are major drug kingpins who have never used drugs, and there are a lot of people in prison today for offenses such as bank robbery or other nondrug related offenses who are drug users. So when you combine those two figures, the size of the problem is much greater than would be indicated by each of them singularly and is another grim reminder of how pervasive the drug abuse problem is.

Senator BUMPERS. I think the staff told me that the figure for 1981 was 25 percent were either on drugs, charged with a drug offense, or when tested, tested positive for drugs.

Mr. THORNBURGH. I would have to defer to Director Quinlan.

Senator BUMPERS. Those are three separate categories, I guess.

Mr. QUINLAN. In 1981, 25 percent of the Federal prison population at that time were serving sentences for drug offenses. I don't have data from 1981 as to what percentage of the population were moderate or serious substance abusers problems. That in 1981 was a different group.

Senator BUMPERS. Is the figure for 1988 43 percent?

Mr. QUINLAN. Forty-three percent for 1988 are drug offenders.

Senator BUMPERS. For drug offenders. The figures for those who might test positive are higher than that; the drug offender is not necessarily a user?

Mr. QUINLAN. That is correct.

Mr. THORNBURGH. That is the point I was trying to make, that you have a little bit of apples and oranges.

Senator BUMPERS. You know, the Governors of this country have had, oftentimes, under court order, to pick out the least threatening inmates, usually white collar criminals and so on, and release them in order to keep their prisons within the constitutional limits and conditions. I believe in penalties and I believe in strong law enforcement, but last year, the Attorney General told us by 1995, they hope to have crowding limited to 20 percent. Now, this year, you are saying, by 1995, it is going to be 30 percent. It seems to me that all the money in the world is not going to be able to accommodate enough construction to take care of this problem.

EARLY RELEASE TO REDUCE OVERCROWDING

So my next question is: Why could not the Federal Government do what the Governors have had to do in order to alleviate crowding? If some guy has got 5 years on his sentence, he is going to have to do 5 years. He has been there 4 years, and he is a white collar criminal. He is not violent and no threat to society. Why should he not be released? You have a lot of those types of prisoners.

Mr. **Thornburgh**. Let me answer that in a couple of ways, if I might, sir. First of all, I slightly quarrel with your premise that Governors or mayors or other State and local officials have been obliged by court order to release people from prisons. They have a choice. They can also choose to build more new prisons to accommodate the overcrowding, as we did when I was Governor of Pennsylvania. We increased our prison capacity by 30 percent rather than let people out of jail who had been sentenced appropriately by the courts.

And that is what we are not only choosing to do in the Federal system, but are obliged to do. Under the sentencing guidelines we have now, I think, quite properly, abolished parole and have provided that a sentence given within the guidelines will be a sentence served. That being the case, we are obliged to, as I indicated to the chairman, on a phased-in basis, begin to build up our prison capacity to deal with this problem.

I suppose the only positive signal that we would look for in this regard is on the drug side, because as the Senator has pointed out, this enormous increase has been stoked largely by more effective enforcement on the drug side. If we are, over the next decade, and I would not hold out much hope for a shorter time period, able to conquer the drug culture in this country and make drug abuse an inadmissible lifestyle, to reduce the consumption of drugs and, therefore, reduce the incentive for people to traffic in drugs, then we may see some relief, but I would be misleading this panel to hold out any prospect of short-term relief. In the short term, we are simply going to have to have more prison capacity if we are going to enforce this law.

Senator **Bumpers**. Let me say that I agree with you. I inherited a system when I was Governor that had been declared unconstitutional. They had to do tremendous things, spend money we never thought we would have to spend. Prisons have no constituency. Your own Senator Specter and I have kind of been on the cutting edge of trying to get more money for prisons.

But I would agree with you that your statement this morning does not ask for enough money to address the problem as well as it ought to be addressed, and I am not sure we can ever get enough money out of the Congress to address it the way you are talking about it.

We did release prisoners in our State. I didn't enjoy watching those people walk out of prison. I think people ought to serve their sentences. You have to offset that against what the problems are.

Mr. **Thornburgh**. I hope there is enough of your constituency among you and your colleagues to help us.

Senator **Bumpers**. If we hadn't passed that drug bill, I don't know what would have happened.

Mr. **Thornburgh**. We had in the drug bill, the borrowing authority. Mike Quinlan is to be complimented in using some imagination in meeting these needs, but you are absolutely correct, and they are not, by any means, going to be met within the parameters of this year's budget.

Senator **Bumpers**. Mr. Chairman, thank you. I do want to compliment you, General, on your statement on how to deal with the drug problem. I am one who has fought like a tiger—and the Democrats had a special committee and the Republicans had one in drafting this drug bill—for more money on the education and prevention side.

You are not ever going to stop all drugs from coming into this country. It is a long haul, and we are used to the quick hamburgers and instant oatmeal. We are looking at the long haul, but I think your heart is in the right place, and I compliment you.

Mr. **Thornburgh**. Thank you.

Senator **Bumpers**. Thank you, Mr. Chairman.

AUTOMATIC WEAPONS

Senator **Hollings**. Senator Adams?

Senator **Adams**. Thank you, Mr. Chairman. First, I want to say that I am pleased to have the opportunity to join this august body, the Appropriations Committee, and particularly this subcommittee. It is a great pleasure to be here.

General, I want to cover just five topics, but most of them I will put in writing because some of them have either been covered or could be handled by written questions, and I would appreciate your indulgence. On the first one, I will send a letter to you on enforcement of regulations against assault rifles. As I say, as a former U.S. attorney working with the Bureau of Alcohol, Tobacco and Firearms, I do not understand why the regulations in alcohol, tobacco and firearms cannot cover this type of weapon, whether you call it semiautomatic, Mr. Chairman, or automatic. Any time you can put that trigger down and put forth that many bullets in that period of time, that is an automatic weapon that we have, in the past, interdicted.

I agree with you that if something isn't done, General, we will try to amend the statute. I would hope that it would be done by regulation, but I will send a written question on that.

CLEANUP OF NUCLEAR WASTE SITES

Second, there are a series, and you mentioned them in your testimony, of nuclear reactor facilities agreements attempting to have Justice join with EPA and agree with the States on cleanup of these nuclear sites. I would hope you would be supportive of that, and I want to express my appreciation to you and the members of your Department for having dealt with the State of Washington and their officials. I think that can be a landmark agreement. I want you to know that we are very much in support of it. I will submit a written question on it, but if you have any comment you wish to make on it, I assume the Justice Department is proceeding to try to negotiate an enforceable and long-term agreement on this matter.

Mr. **Thornburgh**. That is correct.

Senator **Adams**. I appreciate that, General. It is a change in attitude, and it is very helpful.

REPARATION TO JAPANESE AMERICANS

The third deals with Japanese reparations. I am hopeful, General, I am appreciative of your statement in here. Many of us worked very hard on the Japanese redress law. We have a great many people who are dying every day, so there are fewer and fewer Nisei left; so that program should move forward. I notice it is not funded at the full amount, but I will be communicating with the appropriate members of your staff with regard to that subject simply because we have a great many of these people in our area that will just no longer be with us in a few years.

PRISON SYSTEMS PROBLEM

The fourth matter is on the prison system, and I apologize, again, to Senator Bumpers for breaking in, but there have been a number of proposals to close Army bases and Navy bases throughout the country. It has been my suggestion to use these properties, and I would hope that you are looking at surplus properties. It has always been my contention from touring the Federal prisons for 25 years that a great many minimum security prison systems can be built on these bases at minimum cost.

I have had a number of private people come in and call on me to discuss their proposals to build prisons. I would simply state to the chairman that we, at the present time, are housing D.C. prisoners in Spokane, WA——

Senator **Gramm**. And Texas.

Senator **Adams** [continuing]. On a rent-a-cell basis. I am not sure this is the way to do it, but I know that in rural California, they are beginning to build these, and there are more suggestions with regard to Lorton and building of prisons in some rural areas, where that facility could be changed. I think we have to be very innovative, Mr. Chairman, and I agree completely with the law enforcement community that there is no point in arresting people and going through the court system and then having people put back out on the streets, particularly in Washington, DC, and Miami and certain other major cities. We simply have to immobilize these people.

By that I mean, they have to be placed in incarceration facilities where they are not immediately out on the streets, and from what I am told by people, and I happen to have to deal with the District of Columbia Subcommittee, Mr. Chairman, the Jamaican and the New York connection is having it out here. General, I just want to urge you to look at holding facilities and to recommend to the chairman and the Members of this committee funding for correction facilities that may be temporary, Mr. Chairman, in nature but to stop the immediate problem.

MILITARY ROLE IN DRUG INTERDICTION

My fifth and final point is just this: I don't know what your position is, and maybe you don't want to state it at this hearing, but I was Secretary of Transportation with jurisdiction over the Coast Guard, and we have no interdiction program south of Miami that can be handled by the Coast Guard or by traditional forces. I happen to favor the use of military forces overseas, not within the United States, but the use of both AWACS and other surveillance equipment to supplement both the Coast Guard, the Customs, and the other people.

I would like to know if you have a position on that because I just know that I remember one time, you burned 26 tons of marijuana in the Miami incinerator and burned it out. It is that bad a problem, and yet our boats were running around picking up bales of marijuana, and the cocaine was flowing in at an enormous rate.

I would like any comment you would like to make on it. If you would rather respond in writing so as to not take time of the committee, I would be satisfied. I compliment you on taking the job. I am very pleased that you are there, and I have great hopes that the Department of Justice will reach its days of glory of the past.

Mr. **Thornburgh**. I would also say, in response to your latter comment, we will be glad to furnish a response in writing, but I think the Senator knows that Secretary Bennett has expressed himself along the lines that you have suggested about the appropriate role in the military. I was pleased to see that view was reinforced yesterday publicly in hearings with the Defense Department indicating a willingness to play a much bigger role in the interdiction process. But we will respond in more detail.

[The information follows:]

Role of Military in War on Drugs

The Administration is in the process of developing policy on the enhanced use of the military services in combatting drugs, and the primary responsibility for addressing this issue rests with the Director of National Drug Control Policy. However, it is the view of the Department of Justice that expanded military logistical support for interdiction and law enforcement operations, including international eradication initiatives would be most valuable. There are a number ways that the role of the military in providing logistical and technical support is being expanded, as outlined in recent Defense Department testimony before a subcommittee of the House Armed Services on February 22. Other appropriate means by which the military can contribute resources and intelligence to the war on drugs are still being explored.

SOVIET REFUGEE QUESTION

Senator **Adams**. Thank you, Mr. Chairman.

Senator **Hollings**. Thank you, Senator.

Senator Kasten.

Senator **Kasten**. Mr. Chairman, thank you. You mentioned in your response to, I believe it was Senator Rudman, that we have got a number of refugee questions and problems, and I want to talk about the Soviet refugee questions for a moment, because I think we have got a real emergency there, and it is a very serious problem. My understanding is that as of right now, we have 743 second-quarter 1989 visas remaining. If that is the case, and do you know that that is the case?

Mr. **Thornburgh**. I wouldn't want to answer that without Mr. Nelson. I don't know the figures off the top of my head.

Mr. **Nelson**. I don't know the figures off the top of my head.

Senator **Kasten**. I have a couple of articles and some other things, but anyway, it is a very small number. Those are going to be used up by the time we finish this next quarter.

You have roughly 3,750 that would be available for the rest of the year. Has there been any discussion with you all or the Department of State about using up the ones that are remaining for the third and fourth quarters immediately when you have got this 4 or 5 week backlog right this moment in Rome, or are you planning to just stop and then wait until the third quarter starts? What is the plan with regard to the visas remaining for this quarter and for the end of the year?

Mr. THORNBURGH. The problem with regard to Soviet immigrants is obviously one that is going to have to be addressed in the Congress and by the administration this year. We have taken some short-term steps to try to alleviate the problem in connection with the Department of State. President Reagan, before leaving office, announced a reallocation of some slots from Southeast Asian refugees directed toward the problem of Soviet immigrants.

We also have indicated our willingness to exercise the parole authority that exists within the Attorney General's Office to deal with individuals who might not otherwise be eligible, but I think the most promising solution lies in a change in the law. We would be pleased to work along the lines that we have already commenced to examine with the Congress a new special category of entrant that roughly advances, in general terms, the foreign policy interests of the United States.

I think a combination of the short-term procedures that have been set in motion and an early addressing of the long-term problems, Senator, should alleviate the concerns that you and others have expressed. They are real concerns. We are aware of them, concerned about them, trying to accommodate within existing structures as best we can, but I would urge that a more permanent solution to this problem be addressed in this session.

Senator KASTEN. Let me say, first of all, I agree with everything you have said. Let me just ask, then, can we start working? The Refugee Act of 1980 says that when there is an unexpected rise in refugee population that then, the administration would, in fact, consult with Congress.

Mr. THORNBURGH. Yes.

Senator KASTEN. And work out a solution. You are saying to me that you do plan, you and the State Department are planning to consult with Congress?

Mr. THORNBURGH. That is exactly right. That consultation is done on a yearly basis to establish the number of entrants that are allowed under the act. What I am talking about is a consultation on a change that might create a whole new category that would, in effect, be a safety valve for this type of surge that we are experiencing, particularly in the Soviet Union.

Senator KASTEN. I think most of the people that have been intimately involved in this feel that the substitution of the Southeast Asian refugee population for the Soviet population was not——

Mr. THORNBURGH. No; it is not ideal.

Senator KASTEN [continuing]. Was not a workable way. But I just wanted to reemphasize. We have got 743 visas available. We have got people now, my understanding is, with a 4 or 5 week backlog in Rome. Some of them are plugged up in Geneva. This is something that we are going to have to deal with probably in the next couple of weeks.

CHANGE IN REFUGEE QUALIFICATIONS POLICY

So the other point I want to make is that my understanding is that there has been a change in the policy with regard to people qualifying for refugee status. It has been suggested that that change in policy is because of the growing population. Specifically, in the early months, September going back to August, last summer, between 3 and maybe 5 percent at the highest, each month were refused. You now are at this point in January, I understand, that you are refusing between 15 and 20 percent. Roughly 800 people from October through January were refused, and frankly, you can't tell any differences.

I have tried to look at this. You can't tell if they are members of the same family. It just depended on whether or not they were being interviewed by one INS person or another, and maybe everyone has a quota at the end of the day—I hope this isn't the case—but at the end of every day you have got to turn six people down and you are just unlucky, but there is no sense to going back and looking at which refugees made it and which didn't out of this basic group.

If you are assigning quotas——

Mr. **Thornburgh.** No.

Senator **Kasten** [continuing]. Obviously, that is wrong, and I hope that that would stop. Can you explain to us why 16 or 17 percent were refused in January and less than 2 or 3 percent have been refused on a regular basis up until the last couple of months?

Mr. **Thornburgh.** There has been no change in policy, Senator. I will ask Commissioner Nelson to give you an up-to-date briefing and report on those numbers and the reasons for any change. I would be greatly disturbed if it develops that there is some irrationality in the process. Our responsibility with respect to each individual who is seeking refugee status should be and is, to my understanding, on a case-by-case basis, but I will ask Commissioner Nelson to comment.

Senator **Kasten.** I don't know if you happened to see, Commissioner Nelson, I think it was "Ted Koppel Nightline," and that was one of the points they made on that program a couple of weeks ago. In certain cases, they had examples of people that were members of the same family, I mean, that just, I hope it is a mistake. I hope it is not a change in policy.

Senator **Hollings.** If the Senator would yield, would the Commissioner want to comment?

Mr. **Nelson.** Yes; I would. Thank you, General. First of of all, Senator, there is no quota. There hasn't been a quota in the past, and I am certain there won't be under this administration. The Refugee Act of 1980 calls for a case-by-case determination, which is what we are doing and what we have always done. So there is no change.

You mentioned the "Nightline" program. I was on that program. I know there have been different adjudications of people from the same family. I am not unaware of those. It is like a judge. You have got different judges in different cases. But our people are there to carry out the law, and they do it very well. Most of those are carried out on refugees and we must make a determination, and in some cases, they won't qualify. At the Department of State, Secretary of State Shultz used the profile very generously, so basically, everybody coming out of the Soviet Union who can come to the United States is coming. I think another point is——

Mr. **THORNBURGH**. I don't think anybody has been refused.

Mr. **NELSON**. I don't think so.

ENTRANCE UNDER PAROLE POLICY

Senator **KASTEN**. I know the parole issue is one. The other issue that is associated with this is whether they should be going to Israel or coming here. They don't want to come in under the parole policy. The fact is, no matter how you look at it, there has been a change from the number of people you were turning down in October to the number of people you were turning down in January, and the law says any person with a well founded fear of persecution in his homeland should be considered a refugee. That is the law.

Mr. **NELSON**. That is the standard of the law.

Senator **KASTEN**. That is the standard you should follow, and you should be consistent.

Mr. **NELSON**. I should mention a point that I was mentioning to other Members of the Congress. While this is a problem area and we obviously need to deal with it, we ought to see the big picture that this is the result of a success by President Reagan and President Bush and now, we have a much more open immigration and travel policy. We are all pleased with that. But I think it does create an obvious problem. You can't take everybody here, whether they are refugees or not.

We are the most generous country in the world, and that will continue, but we must work with all of the countries of the world as well as the Soviet Union that haven't already transferred. As the Attorney General says there have been some turned down as refugees because they didn't meet the definition in the opinion of the reviewer, but they are coming in on a parole status.

Senator **KASTEN**. Mr. Chairman, I don't want to belabor this. Some of these funds and some of this responsibility is in the Foreign Operations Subcommittee and they work the State Department side, and some of it is here in State, Justice, and Commerce, but this is a significant problem. A number of people fought a number of years to try to get the Soviet Jewish immigration picked up, and now, here we are unable to handle it. It is a great personal tragedy for a large number of these people.

I will just ask you to begin immediately to work with a few of us and see if we can find some money somewhere, and I really need to know why as many people have been turned down in the last couple of months that weren't being turned down 1 year ago. The persecution in the Soviet Union, here is an article from the New York Times just a couple of days ago. It has not ended. There are some people that say that there is rising antisemitism in the Soviet Union now. I believe these people have a well-founded fear of persecution. I believe these people should be treated as refugees, and I think the wide majority of both the House of Representatives and the Senate have the same feeling that I do.

Mr. THORNBURGH. It is a feeling shared by this Attorney General.

Senator KASTEN. And, I think, this administration.

Mr. THORNBURGH. We can work together to achieve a long-term solution to this problem rather than being confined to the kind of ad hoc remedies such as the reallocation and the use of parole power, and my pledge to you, we will work closely with you in reaching that goal.

Senator KASTEN. Thank you.

Thank you, Mr. Chairman.

ASYLUM APPLICANTS IN TEXAS

Senator HOLLINGS. Very good. Senator Gramm.

Senator GRAMM. Mr. Chairman, thank you, and Mr. Attorney General, let me welcome you before the committee, and I want to begin by thanking you. As late as 1 week ago, we had 800 illegal aliens a day coming into Brownsville, TX, asking for asylum.

Less than 2 percent of them, by any definition of the qualifications for political asylum, qualified. The problem was that there was such a massive overload that these people were being released to go to New York and Chicago and Miami and Dallas and all over the country.

Mr. THORNBURGH. Under court order, I might add.

Senator GRAMM. Under court order. I called on you for help, and you responded by instituting a policy that, within 1 week, has reduced the number of applicants from 800 to 30 per day. The policy basically is a policy that makes a timely judgment as to whether a person has a frivolous claim or not.

The people that do not have frivolous claims are processed and given amnesty under the law; those that do not have a claim are detained and then deported, and the net result is, in 1 week, though I am not saying the problem is over, and I don't want you moving all these extra INS people, but I want to begin by thanking you for having the guts to address the problem.

It doesn't sound like a very big problem in Washington, DC, but I can assure you in Brownsville, a town that already had plenty of economic problems, one of the highest unemployment rates in the country, having literally 800 people a day come into the country illegally; sleeping on the streets; public health problems in communities with no resources to deal with them, 98 percent of whom have no claim for asylum, even though God knows they have got problems living in countries that don't have economic freedom and, therefore, don't have opportunity.

So I wanted to begin by thanking you for what you have done, and I want to urge you to stay with it. I am sure there will be those who will criticize the policy, saying that we ought to just have open borders in America. That is not what the law is. You are enforcing the law, and I want to tell you that you have my support.

Mr. THORNBURGH. Thank you.

ASYLUM PROCESSING IN EMBASSIES AND CONSULATES

Senator **Gramm**. I wanted to ask you a question. One of the things that I have been looking at, and I have been looking at it basically because I look at Mexico. Mexico has had a 40-percent decline in their standard of living in the last 10 years, and their standard of living was already quite low. And I look at Central America and the problems there, and I see this as a potentially explosive problem.

The way our asylum applications work in most of the world is that, for example, someone leaves the Soviet Union and goes to Rome, applies for asylum in the United States; we review their papers; we either grant them asylum or we don't while they are in Rome.

The problem we have in Texas is that people come to Texas and apply for asylum in huge numbers, creating backlogs. They then go on to other parts of the country, and we, in essence, lose control of the whole system.

I have been thinking about a bill, in fact, I have been working on one, that is looking at some changes. Say you have someone from El Salvador, and they leave El Salvador, and they cross the borders of two or three nations that have diplomatic relations with the United States until they finally show up in Brownsville illegally and then they ask for asylum.

What would you think of requiring someone who transits through a safe harbor country, a country that has diplomatic relations with the United States, to require that they apply for asylum at an American Embassy or an American Consulate in that third country and that a determination be made there before the people get here?

I mean, it has got to be a crushing thing for a family to sell everything they own in El Salvador, and cross a continent, only to get to Brownsville and be told, "You don't qualify," and then they have to go back to El Salvador.

What would you think of a policy that would require them to apply before they leave, if they are passing through another country with which we have diplomatic relations, and make it automatic that they would be deported if they arrive here having passed through these other countries without making application?

Mr. **Thornburgh**. Well, I don't want to give a snap judgment. As usual, Senator Gramm is out front of the rest of us when it comes to imaginative ideas, and I have to acknowledge your assistance in accomplishing some alleviation of the situation in south Texas. You were, as usual, not at all bashful about raising the question with the Attorney General and offered your usual insights into the problem.

I would like to give some consideration to your suggestion, and perhaps we can respond to you in a little more detail.

Senator **Gramm**. I would appreciate that.

Mr. **Thornburgh**. There are problems, it seems to me of extraterritoriality and sovereignty of nations with whom we have to deal on a continuing basis. There is also the problem of the burden that might be lodged in those nations in the case of those who were rejected for asylum and then have to wind their way back to their home country.

But clearly, this is an area where some innovative thinking has got to be undertaken and in the context of an overall review of how our current immigration laws are working, I think that would be something worth looking at.

Senator **Gramm**. Well, I will send the proposal as it now exists over to you. Mr. Attorney General, I want to tell you that this is going to be a major problem, and it is not going to go away. We are going to have to come up with some policy to deal with it or else we literally are going to have millions of people coming across our borders.

Somewhere there has got to be a policy to address it, and obviously, it is a tough political issue. I have another issue.

Mr. **Thornburgh**. I might just mention one other thing, Senator. We are planning, at an early date, to engage our Mexican counterparts in a dialog on a variety of issues, and the immigration issue obviously will be one of them. They, as our most adjacent neighbor, obviously, will have a considerable interest, and we can put a lot of these things on the table to discuss with them.

[The information follows:]

Third-Country Asylum Processing

The Department is presently reviewing the draft legislation proposed by Senator Gramm concerning this subject. We expect to provide commentary concerning the Senator's bill which would revise certain procedures for applying for asylum in the near future.

DRUG ABUSE IN FEDERAL PRISONS

Senator **Gramm**. Mr. Chairman, I just have a couple of other issues I will try to hit quickly. We have in the drug bill a provision concerning drug use in prison, random testing programs, extension of sentences for people who are found to be using drugs in prison, and then a mandatory sentence for people that bring drugs into prisons. I hope, as we try to implement this new drug law, which gives us a lot of new tools, some of which will probably work, some that won't work, I hope that is something that we can move very quickly on, because I think it is very important if we are to have a drug-free society, which I strongly support and am committed to.

A good starting point is to keep drugs out of prison. I mean, if we can't keep drugs out of Federal prisons when we have walls around it and we have guards there, it simply makes a mockery of our whole program, and I hope that you will use these new powers that are in this bill, thanks, in large part, to our colleague, Senator Rudman, to try to do something about drug abuse in the Federal penitentiaries. I hope that you encourage States to do likewise.

Mr. **Thornburgh**. I don't know whether Director Quinlan has any comment on that. I invite him to make it.

Mr. **Quinlan**. Thank you, Governor.

Senator, we have a very effective drug testing program currently for inmates. Last year, we tested about 50,000 inmates for drug use. We particularly focus on prisoners we think might be users in the high risk group. We have an overall positive rate of 3.5 percent and that is down in the last 2 years from 7.5 percent.

We are continually trying to reduce it further, but I do greatly appreciate the support from the Congress to do better and to make enforcement better.

Senator **Gramm**. Well, this law gives you statutory support for extending sentences and for stiff sentences for people who bring drugs into prisons.

ALTERNATIVE SOLUTIONS TO PRISON OVERCROWDING

The final point I would like to bring up, and I would like to just throw it out to you, Mr. Attorney General. I don't expect any real response on it today, but I think it is something that ought to be addressed. I think that if our initiatives on drugs are successful, that the problem I have in mind will begin to decline, I think in part, because of education, in part because of enforcement, in part because the public will have become far more aware of the drug problem and its dangers. I think that we are going to begin to make progress over the long run.

But the problem is in the short run, we have a tremendous shortage of prison space. We have a real problem in my State because we have an activist Federal judge who has on a consistent basis, forced us to release people from prison because of overcrowding. I would be interested in——

Mr. **Thornburgh**. It is a State system?

Senator **Gramm**. Well, this is from the State system, and we have the same problem that everyone else does with regard to our Federal prisons. We have also had limitations on our abilities to keep people in tents and other areas that are obviously less than desirable, and there are a lot of rural courthouses in my State where the only air-conditioned room in the courthouse is the jail because of orders from Federal courts.

We have got a bulge in the demand for prison space now that hopefully, God willing, in 10 years, will not be needed to the same degree it is now; what about the possibility of perhaps declaring some kind of national emergency and limiting the power of the Federal courts to force us to release prisoners except within a more narrow definition of overcrowding that would involve threats to exposure or malnutrition or physical and mental impact; to force a look at not just the overcrowding of felons, but also, to look at the public safety.

I can't understand when we had 20 million men in uniform during World War II, many of whom who were out sleeping in tents, why we can't put Federal prisoners in tents in a period of time where we do have this critical shortage and where we are going to have a surge in demand.

I don't expect a response on that today. But I would appreciate it if you would have somebody think about it and give me your thoughts on it.

Mr. **Thornburgh**. Sure.

Senator **Gramm**. It is something that I have started to think about. It is a difficult area, because you are talking about the Federal courts, and you are talking about the relationship among the branches of Government in terms of power and jurisdiction, but I think it is a real problem that ought to at least be thought about.

Maybe it will be rejected, and maybe I would end up rejecting it, but I think it is something we ought to think about.

Mr. **Thornburgh**. Thank you.

Senator **Hollings**. On that line, the judges are going to reject it. That is the point. The same judge that finds that you ought to have air-conditioning is certainly not going to go along with the air that comes in under a tent wall. That same judge is going to say, "Well, that Congress, they won't pay their bills; they won't obey Gramm-Rudman-Hollings."

Senator **Rudman**. Or raise their salaries. [Laughter.]

Senator **Hollings**. That is right.

Senator **Gramm**. Maybe he will leave, but I doubt it.

[The information follows:]

Use of Tent Cities for Prisons

The Federal Prison System, unlike many State systems, has not had to deal with court intervention in cases involving conditions of confinement. FPS, however, does believe that confining Federal prisoners in tents, even for short periods of time, could lead to court intervention and could involve lengthy litigation.

PRISON POPULATION AND CONSTRUCTION PLANS

Senator **Hollings**. They won't raise my salary, and they won't provide the prisons. Now, they say, "To heck with the Constitution. We'll just say put them anywhere."

We have a real problem there, and along that line, and I am going to get back to El Salvador, because you intrigue me.

General, please give us for this year, next year, and the third year, just a couple of years out, what you plan for prisons. I know we are going to be facing amendments in our Appropriations Committee. To this subcommittee's finding, we will negotiate with you. We will talk with Director Quinlan, whom I agree is doing an outstanding job, and even in spite of the outstanding job both of you are doing, we will have those amendments, and we ought to have some kind of factual basis as to what the prison population is projected to be this year, next year and the third year and how we intend to take care of it so we can show our colleagues in the Senate that we have been deliberate and objective and tried to do the best we can, because the Federal judges really have got the ultimate control.

I was campaigning in Alabama, and they have got better rooms in the prisons than they have in the university. That is the way those judges go. But I do think you ought to clean up a good many of the prisons. [Laughter.]

[The information follows:]

FEDERAL PRISON SYSTEM CAPACITY EXPANSION PLAN

[Dollars in thousands]

	Federal inmates	Rated capacity	Prison construction costs	Overcrowding (Percent)
March 2, 1989	46,900	30,543		53
Construction in progress		13,318		
Future plans for prison construction:				
Fiscal year 1990		7,845	$360,600	

FEDERAL PRISON SYSTEM CAPACITY EXPANSION PLAN—Continued

[Dollars in thousands]

	Federal inmates	Rated capacity	Prison construction costs	Overcrowding (Percent)
Fiscal year 1991		4,070	253,600	
Fiscal year 1992		4,970	326,500	
Fiscal year 1993		3,630	232,500	
Fiscal year 1995	83,500	64,376	1,173,200	30

REFUGEE VS. ASYLUM STATUS

Senator **Hollings**. Now, back to El Salvador. Why go through Guatemala or Mexico and check in there? Why not go where one has diplomatic relations? Say that I am from El Salvador. Is there some way to check my status as a refugee? Is that an axiom, that how in the world can you be a refugee when you are checking in with the authority and you are not refugeeing yourself from the authority?

In other words, what is the difference between going to Mexico facilities and a diplomatic authority and going to El Salvador? I am from El Salvador. I will start with Senator Gramm's example. Is there some way to determine, where there are diplomatic relations in a particular area? Why wait to get all the way around it?

Mr. **Thornburgh**. At the risk of oversimplifying, subject to amendment by Commissioner Nelson, I think the differences between the status of the refugee and the asylee, the refugee is outside the country and the asylee is inside the country; is that fair?

Mr. **Nelson**. That is correct.

Mr. **Thornburgh**. And the same standards apply: They must demonstrate on a case-by-case basis a well-founded fear of persecution. So to that extent, what Senator Gramm is talking about is already in place, but I think what he is suggesting is that we take the category of individual who is seeking asylum and push them back in the system to oblige them first to seek refugee status in the country of their origin or any transshipment.

Senator **Gramm**. Mr. Chairman, I think allowing people in El Salvador to go to the American Embassy is something that I have thought about. I think the problem you would run into is that they would argue that they are going there claiming they are being persecuted, and so they are going on subject to reprisal.

Senator **Hollings**. Yes; standing in that line.

Senator **Gramm**. Whereas once they cross the border and go on to Mexico, for example, that going and standing in the line does not put them in any danger from the authorities.

Mr. **Thornburgh**. Right.

ADDITIONAL COMMITTEE QUESTIONS

Senator **Hollings**. Senator Lautenberg had to leave for another hearing, and I want to submit his questions for response in the record, and we have other questions. I have questions myself I want to submit. Senator Adams, did you have further questions?

Senator **Adams**. I do, yes, Mr. Chairman.

Senator **Hollings**. Please, go right ahead.

Senator **Adams**. No; I have further questions for the record.

Senator **Rudman**. I have questions for the record. I just want to thank you for your testimony. This committee has worked very closely with Justice for 8 years. As a matter of fact, we were rather successful in resisting amendments on the floor if we work things out ahead of time and get what you all want. We are glad you are there. We look forward to working with you.

Mr. **Thornburgh**. Thank you.

Senator **Hollings**. We really appreciate it. It has been an outstanding presentation, General Thornburgh. We appreciate what you are doing. It is refreshing, we are up here and the Senators agree with each other. Isn't it wonderful?

Mr. **Thornburgh**. I will wear out my welcome if I don't watch out.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

Defense Procurement Fraud

QUESTION: Former Attorneys General have placed the investigation and prosecution of Defense Procurement Fraud as a top white-collar crime priority. In June 1988, the General Accounting Office (GAO) issued a report that was critical of the Justice Department's overall management of this high priority area. GAO found among other things that the Department did not know the overall status of its defense procurement fraud workload, did not know the amount of resources being spent in this area, and did not have written plans on how this high priority is being addressed. What are your views on the GAO report?

ANSWER: The Department began several years ago to address questions concerning its overall management of the investigation and prosecution of defense procurement fraud. Several procedures designed to ensure effective and efficient management of this top priority area were put in place well before the issuance of the GAO report.

For example, the GAO report found that the Department lacked complete and timely data on case status, based on the perception that the Department and the United States Attorney's offices were failing to report and update referrals in the Fraud and Corruption Tracking System (FACT). The Department has taken several important steps to alleviate these problems. In February 1987, the President's Council on Integrity and Efficiency formed a working group to redesign the FACT system with a view toward enhanced timeliness and accuracy in case tracking. Since October 1, 1987, the Defense Procurement Fraud Unit has forwarded a pre-completed FACT system reporting form with every case referred to a United States Attorney's office. In July 1987, the Assistant Attorney General for the Criminal Division, in a memorandum to the Office Directors and Section Chiefs, emphasized the importance of proper utilization of the Division's FACT system and informed them that their performance evaluations would include an assessment of their efforts to ensure the accuracy and timeliness of that reporting. These efforts should provide the Department with a more effective management tool.

The GAO report also found that the Department was unaware of the amount of resources that were being devoted to prosecuting defense procurement fraud. This is more of a problem in the United States Attorney's offices, where attorneys are not required to enter their fraud cases or their time spent on these cases into the FACT system, than in the Defense Procurement Fraud Unit, where attorneys are dedicated to working these cases exclusively. The Executive Office of United States Attorneys is currently exploring with United States Attorneys use of tracking forms known as USA-5's to account for time spent on Department of Defense (DOD) procurement fraud, as well as other significant law enforcement areas.

GAO recommended the use of a case weighing system to assist in the Department's resource management effort. The Department believes, however, that defense procurement fraud cases do not lend themselves to the same type of weighing as is effective in the management of the organized crime area. The Department does not feel it would be effective to develop such a system because of the extreme difficulty in determining the appropriate factors and the probability of not being able to apply them in a meaningful way to the types of cases handled by the Department.

Finally, the GAO report found that the Department did not have written plans on how the prosecution of defense procurement fraud was being addressed. The Department agrees that written management plans for the defense procurement fraud area would be a good idea. At present, the Defense Procurement Fraud Unit frequently relies upon written memoranda to establish timetables and investigative goals for complex investigations. This unit also provides regular direct supervision of attorneys assigned to the larger, more complicated cases. In addition, attorneys in the Criminal Division's Fraud Section are routinely required to describe for their superiors in writing the investigative steps planned for their cases. As noted in the GAO report, the Fraud Section, beginning in May 1987, required that case review memoranda be prepared every 90 days. Regular case reporting by the United States Attorneys offices is less common and less formalized. The Fraud Section has also implemented a formal indictment review process requiring the preparation of prosecution memoranda and round-table review of proposed indictments by the Section's four Deputy Chiefs and the Chief of the Defense Procurement Fraud Unit. Many of the United States Attorney's offices follow a similar procedure but only with respect to indictments of a complex or sensitive nature.

QUESTION: As the new Attorney General, will defense procurement fraud continue to be a high priority of the Justice Department?

ANSWER: My answer to this question is an unequivocal "yes." One of the Department's highest priorities is Department of Defense fraud and the Justice Department will continue its commitment to vigorously prosecuting defense procurement fraud cases. Since 1982 when the Defense Procurement Fraud Unit (DPFU) was created, the Department has consistently increased its staff. Today, we have twelve Justice Department lawyers assigned on a full-time basis to DPFU. Three of these attorneys are dedicated to the investigation "Ill Wind" and are permanently located in the United States Attorney's office in the Eastern District of Virginia. In addition, the

DPFU is playing a major role in the management and operations of the DOD Voluntary Disclosure Program.

QUESTION: **In your opinion what needs to be done to improve the Department's oversight of its efforts to investigate and prosecute defense procurement fraud?**

ANSWER: In addition to the efforts of the Attorney General's Advisory Council and the Attorney General's Economic Crime Council, I will ask the DPFU and both of these councils to consider bringing together senior prosecutors with experience in defense procurement fraud from the United States Attorneys' offices around the country. I have in mind that such a group would identify trends in all areas of DOD fraud including accounting, defective products and testing, and corruption, and to identify responsive investigative techniques.

I would also ask this group to assist me in establishing priorities and strategies and to identify the most effective means to coordinate the various remedies available to the Government in DOD cases. Finally, members of this group could assist one another as well as other prosecutors in prioritizing multiple investigations involving the same contractor.

QUESTION: **What actions has Justice taken to implement GAO's recommendations to improve the Department's ability to manage this high priority area?**

ANSWER: I have largely responded to this question in my previous answers. As already noted, the Department had taken many steps to implement procedures to correct perceived management problems well before the issuance of the GAO report. These procedures have been discussed. The Department is continuing to review its efforts in this area.

Organized Crime Drug Enforcement Task Force

QUESTION: **In response to provisions of the Anti-Drug Abuse Act of 1988, the budget request for the Department of Justice includes a $214.9 million consolidated appropriation for the Organized Crime Drug Enforcement Task Force program. The consolidated appropriation is new this year and represents centralized funding of the Task Force program. For the record, please furnish information on how the Task Force Program was funded in the past and what effect the new funding authority is intended to have on the program.**

Will the consolidated appropriation strengthen the Task Force program and if so, how? Will the consolidated appropriation provide the Task Force directors (United States Attorneys) with more control over assigned agents?

ANSWER: During the first two years of the Organized Crime Drug Enforcement (OCDE) Task Force program, the budget for all participating agencies was maintained in the Office of the Attorney General. Agencies were funded on a reimbursable request basis. Since 1985, the OCDE Task Force program has been funded from the direct appropriations of the involved agencies.

In FY 1990, as prescribed by the Anti-Drug Abuse Act of 1988, a consolidated budget for all agencies will be administered by the OCDE Task Force Administrative Unit. This consolidated budget will strengthen the Task Force program in that it will enable more effective monitoring of Task Force resources, which will in turn lead to program efficiencies. The consolidated appropriation will not affect an agency's authority or control over its assigned personnel.

Department Management

QUESTION: What do you see as the major management issues confronting the Department over the next four years? What are your plans for attacking these issues?

ANSWER: The Department of Justice faces a number of major management issues in the years ahead. Among these are the following:

Cost Containment. Our top management priority is to target and spend our limited resources as wisely and as economically as possible. We have already taken steps to reduce overhead and place more resources on the front-line of operations. This effort will continue. Where appropriate, we will move aggressively to achieve savings through such additional measures as contracting out, consolidating or sharing services and functions, and eliminating wasteful or duplicative activities.

Recruiting and Retaining High-Quality Employees. Skilled, dedicated and honest employees are the heart of the Department's programs. We intend to continue and enhance our efforts to insure that the Department attracts top-calibre law enforcement and attorney personnel. Because we have salary comparability problems throughout the Department, a number of initiatives, internal and external to the Department, are underway, including the establishment of the National Advisory Commission on Law Enforcement to study and make recommendations on the pay and benefits of Federal law enforcement officers. Within the Department, we are re-examining our attorney recruitment and retention efforts to insure that we are doing all that is possible.

Technology. Advanced technology offers opportunities for increasing both efficiency and effectiveness. The Department will continue to automate its activities to make our work more efficient. Automated litigation support is a key technological initiative that is particularly necessary in handling extremely complex cases. It is also particularly important that law enforcement utilize the latest technology. We need to search out and test new technologies that will better enable us to detect, prosecute and imprison criminals.

Productivity Improvement. The purpose of the Productivity Improvement Program is to improve the quality, timeliness and efficiency of services provided to the public. Although the Department has participated in this Program, we intend to expand and improve our efforts.

Central Management. We need to improve the key central management functions of the Department, specifically strategic planning and program evaluation. The Department of Justice, by design and by tradition, is a largely decentralized agency; its operating components have significant independence in carrying out their law enforcement missions. Nevertheless, in order to best use our resources and insure a coordinated attack on the Nation's problems, we need to focus the work of the Department's components on overall, Department-wide goals and priorities. We intend to improve our planning processes so that goals and priorities are clear and so that there is a foundation for monitoring and evaluating program performance. Improved planning combined with improved, systematic assessment of program and organizational performance will pay dividends over the long-run in more effective and efficient use of resources.

Equal Employment Opportunity. The Department is committed to equal employment opportunity. However, over the past several years the Department's Program has been criticized for excessive complaint backlogs and lengthy processing times. The Department has taken steps to correct these problems; nevertheless, it is clear that this is an area that requires continuing attention of the Department's leadership.

QUESTION: A 1986 GAO Management review of the Department of Justice found insufficient top level attention to, and accountability for, Department-wide general management.

Who will be responsible for overseeing the day-to-day operations of the Department during your tenure?

ANSWER: I strongly agree that there must be sustained top-level attention to agency-wide management functions. Currently, I am reviewing a number of options for assigning responsibility for these functions, and insuring that our central management systems operate effectively.

Under my predecessor, an integrated management system for the Department was established utilizing a series of policy boards. One of these, the Department Resources Board, has played a particularly key role in insuring a coordinated effort. As part of our review, we are also examining the possible roles and responsibilities of these boards or any successor coordinating bodies.

QUESTION: **I understand the Department has recently given serious consideration to creating two Associate Attorneys General positions to stabilize oversight of the Criminal and Civil functions of the Department. Creation of this two Associate Attorney General system would permit the Deputy Attorney General to focus attention on overseeing Departmental management as a whole.**

Do you support this organizational proposal? If so, when do you plan to submit this organizational proposal for congressional approval? If not, do you have an alternative proposal?

ANSWER: In 1987 Attorney General Meese proposed creating two Associate Attorney General positions, one for civil matters and one for criminal matters. Under the proposal, the Deputy Attorney General would have been assigned overall management responsibility for the Department, functioning much like a chief executive officer. Congress did not act on the proposal and it was never implemented.

This organizational proposal is only one of several options that are currently under review by the Department. I agree strongly with the objectives of clearly assigning agency-wide management responsibility; nevertheless, it would be premature to endorse any specific approach at this time. Once our review is complete, the Department will notify the Congress of any proposed reorganization in accord with existing requirements and practices.

QUESTION: **The challenge of managing law enforcement and administration of Justice programs is complicated because of the autonomy inherent in many of the Justice components and because there is a multitude of variables that can affect program operations. Yet evaluating the efficiency and effectiveness of such programs are necessary to ensure that scarce budget resources are used most effectively, and to exercise effective managerial control over the significant recent growth in the Department's resources.**

The 1986 GAO management review found declining resources devoted to program evaluation activities and limited coordination among the evaluation staffs located in the Department's components. What role does program evaluation play in your plans for managing the Department? What program evaluations are currently underway in the Department? Does a system exist for coordinating the evaluation activities of the various components? Could you explain how the system has been used to maximize scarce evaluation resources?

ANSWER: The Department of Justice strongly supports a program evaluation function that formally provides information to senior management detailing the degree to which the Department's programs are achieving their objectives and how well they are being managed. Periodic assessments of program performance are essential to insure that managers are meeting their program goals and that resources are being used wisely and efficiently. Findings and recommendations stemming from these assessments have and will continue to play a critical part in policy and resource decision making in the Department.

The Department currently has several internal staffs performing program evaluations and management assistance reviews. Each of these organization's evaluation units have a full agenda of program evaluations and other studies. We plan on reviewing our current evaluation efforts to identify what gaps exist and how coordination might be improved. Moreover, we intend to examine our information systems to insure that adequate and reliable data are available to Department senior officials on program performance.

Drugs

QUESTION: A recent GAO status report on controlling drug abuse pointed out that the Government needs to develop better measures for assessing the effectiveness of drug control programs. The ability of the Congress and the executive branch to make sound decisions regarding the allocation of resources to drug control efforts is greatly hampered by the absence of factual information about which anti-drug programs work best.

What measures are presently used to evaluate the effectiveness of Justice's drug enforcement efforts?

Can steps be taken to improve the measures for assessing the effectiveness of drug enforcement programs and activities? Is there anything presently being done or planned along this line?

ANSWER: The Drug Enforcement Administration (DEA) has an extensive program in place designed to monitor and evaluate its performance which is based on the principal outputs of enforcement efforts: arrests, drug removals, and asset seizures. These statistics are collected as a part of the normal case file documentation and reports are prepared on a monthly, quarterly, and annual basis for review. These reports provide the basis for review of the performance of each individual office through three interrelated processes: field office inspections, Special Agent in Charge performance evaluations, and annual field staffing reviews.

DEA recently instituted a new process designed to improve its program for assessing performance. The Field Management Plan is an interactive process between DEA headquarters and field management which begins as a strategic plan to outline the direction for a division, is then coordinated with the budget process to ensure resources needed to implement new programs are requested, is used as the basis for evaluating office performance to determine whether goals are being met, and finally serves as the basis for internal resource allocation.

The most common measures used by the Federal Bureau of Investigation (FBI) to evaluate effectiveness are the number of felony indictments/informations and convictions, and seizure and forfeiture of assets in respect to prior years and resources utilized. However, these are quantitative measures which must be placed in perspective with the qualitative factors of the FBI's National Drug Strategy.

It is the experience of the FBI that dismemberment of drug trafficking organizations is the best measure of the effectiveness of enforcement efforts. The benefits of this approach are based on the FBI's experience and expertise developed through investigation of traditional organized crime. The neutralization of organizations yields the greatest and most lasting results. The seizure of drugs, either through interdiction or investigation, and arrest of individual traffickers does little to stop the trafficking of drugs that are capable of replenishment and given the large number of individuals involved in drug trafficking. However, the dismantling of organizations disrupts trafficking patterns, removes management and financial wherewithal and cuts off the source of drugs from distributors. Therefore, it is the opinion of the FBI, the number of significant multi-jurisdictional drug trafficking organizations under investigation and dismantled is the best measure of effectiveness and this is the bedrock of the FBI's National Drug Strategy.

QUESTION: Some in the Congress believe that dramatically increased military involvement is needed to support civilian drug interdiction. Do you agree? Why or why not?

ANSWER: Federal law prohibits, except in certain circumstances, the active participation of the military in civil law enforcement (18 U.S.C. 1385). In addition, resources will have to be allocated for training existing DOD personnel for employment in civil drug interdiction activities.

We believe that increased military involvement is an option which warrants serious consideration. At the same time, attention must be given to ensuring that increased military resources are used effectively.

QUESTION: Operation Alliance was a major initiative of the prior Administration to counter the smuggling of drugs and other contraband over the southwestern United States border. How effective has Operation Alliance been? What have been the statistical results of Alliance in terms of numbers and amounts of drug seizures by type of drug? Are there other measures of Operation Alliance effectiveness? If so, what are the results? Will you continue Operation Alliance in its present form, or do you plan to expand it, reduce it, or otherwise modify it?

ANSWER: Operation Alliance was formed to halt the flow of illegal drugs, firearms, and other contraband across the United States/Mexico border. The design of this program provides for single agency initiatives, but stresses the need to conduct multi-agency coordinated efforts involving Federal, State and local agencies to achieve the desired impact on the organizations doing the illegal trafficking.

Operation Alliance has instituted significant law enforcement initiatives along the Southwest border. Specifically, this program utilizes "Mobile Corridor Operations", which allocates additional personnel and equipment resources, to specific locations on a temporary basis. Additionally, it has provided for the establishment of "Border Smuggling Groups" to focus the enforcement efforts of Federal, State and local resources.

The program emphasizes asset sharing between Federal, State and local agencies as well as the delegation of limited specific primary jurisdictional responsibilities and authorities between agencies. Also, the distribution of communication equipment has allowed for compatible system interfacing.

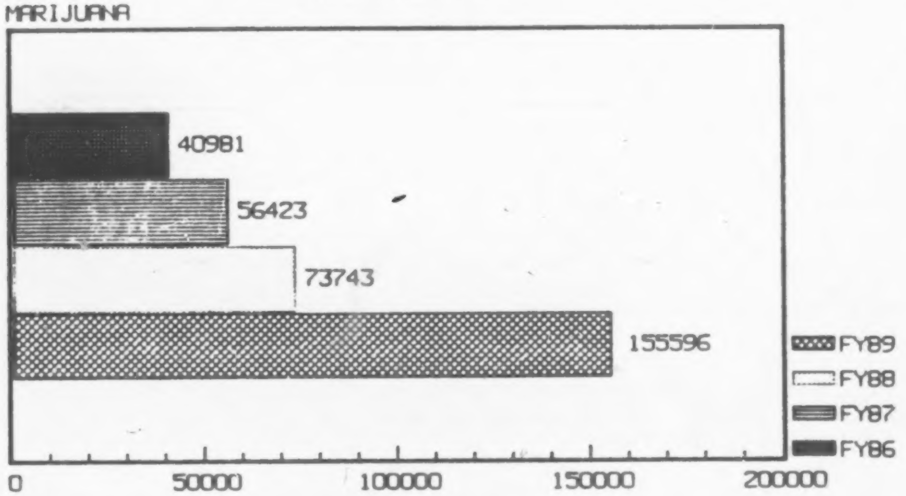
The success of the these initiatives has generated the overall success of the drug interdiction efforts of Operation Alliance. Since the inception of Operation Alliance, comparable border seizures of marijuana in 1988 were reported to have increased approximately 70 percent; seizures of heroin by approximately 162 percent; and seizures of cocaine by approximately 344 percent. The movement of resources, agents and equipment along the border in an effort to counteract the shifting of drug smuggling activities has allowed for the use of resources without placing additional permanent resources along the entire United States border.

Operation Alliance has been effective as measured by drugs seized and prosecutions. As shown in Exhibit A, prepared by the Alliance Joint Command Group, Operation Alliance has significantly increased drug seizures. Prosecutions by the district adjoining the Mexican border have increased substantially. (See the table below.) In FY 1988 the five border districts filed 16.1 percent of the criminal cases brought by United States Attorneys.

Operation Alliance has also increased cooperation between Federal drug agencies. The Drug Enforcement Administration (DEA) and the Customs Service have cross-designated agents. Joint border groups comprising DEA, the Customs Service, and the Border Patrol have become active in drug interdiction and at either end of the border, the Coast Guard has been active. This close cooperation by Federal agencies has focused attention on several issues regarding maximum use of resources. Many of the efficiencies gained in Alliance can be put to use in other areas of the country to increase investigative efficiency in drug cases. Alliance has also promoted cooperation with State

Exhibit A

SOUTHWEST LAND BORDER SEIZURE AMOUNTS
(SEIZURES IN AZ, CA, NM, AND TX)
OCTOBER THRU FEBRUARY
FY86 THRU FY89



KILOGRAMS
SOURCE: EPIC

SOUTHWEST LAND BORDER SEIZURE AMOUNTS
(SEIZURES IN AZ, CA, NM, AND TX)
OCTOBER THRU FEBRUARY
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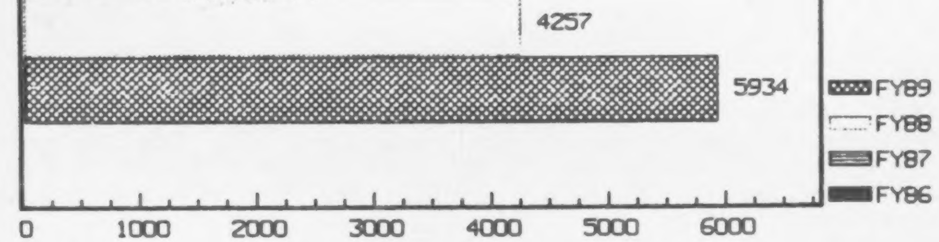

KILOGRAMS
SOURCE: EPIC

Exhibit A

SOUTHWEST LAND BORDER SEIZURE AMOUNTS

(Seizures in Arizona, California, New Mexico, and Texas)*

	Marijuana			Cocaine			Heroin		
	FY87	FY88	FY89	FY87	FY88	FY89	FY87	FY88	FY89
October	9,126	13,123	21,037	5	649	1,081	2.4	1.1	3.6
November	9,611	14,758	43,579	518	421	1,224	1.6	2.6	4.7
December	10,618	16,618	37,488	239	1,888	3,113	2.4	21.0	4.8
January	12,499	14,346	26,984	10	224	85	5.4	2.8	9.5
February	14,569	14,698	26,508	568	1,075	431	1.6	11.8	5.0
March	14,202	18,766		330	1,030		4.1	1.4	
April	13,793	17,860		319	1,590		.7	2.0	
May	16,089	13,199		917	1,582		24.8	3.6	
June	7,669	11,383		1,097	1,602		2.1	6.7	
July	11,562	5,890		204	2,157		6.1	8.5	
August	8,574	7,084		1,267	2,639		3.8	3.4	
September	8,182	4,210		3,045	1,277		1.2	6.4	
TOTAL	136,494	152,135	155,596	8,519	16,134	5,934	56.2	71.3	27.6

*All seizures in kilograms. Minimum amounts for seizures to be included in Border Seizure File are one gram of heroin, 200 grams of cocaine, or 2,000 grams of marijuana.

SOURCE: EPIC, March 27, 1989

and local law enforcement, particularly in establishing a joint communications network. As part of this effort, Customs has provided approximately 500 radios to State and local law enforcement organizations. Alliance has given the opportunity for Federal and State law enforcement to study their roles in drug interdiction. The result has been better use of resources.

Alliance has also focused attention on the importance of reporting intelligence data to a central source. The most important lesson learned is that the data must be provided promptly to the field. The increased effort has resulted in better identification of the organizations involved in drug smuggling on the Mexican border.

The ultimate measure of success is reducing the flow of drugs from Mexico. So long as drug organizations can operate just south of our border, we will have significant drug problems. Thus, current diplomatic initiatives with the Republic of Mexico are important to Alliance whereby we continue to stress that in drug matters, the interests of the United States and Mexico coincide. Further, the joint command group of Operation Alliance continues to review performance of investigative agencies on the border. They are making operational improvements as problems are identified and installing new equipment, such as aerostats. Research is continuing to improve methods of inspecting cargo at ports of entry and of detecting illegal crossings in remote areas.

The effort on the southwest border should not be reduced. The quantity of seizures alone show the necessity for the program. If efforts to interdict drugs on our southwestern border were discontinued, we would send the wrong message both to drug dealers and the Republic of Mexico.

Prosecutions on Mexican Border - 1985 to 1988*

Fiscal Year	Criminal Cases Filed
1985	3,763
1986	4,535
1987	5,025
1988	5,374

Source: Statistical Report, United States Attorney's Office, 1986-1988.

*Districts - Southern District of Texas, Western District of Texas, District of New Mexico, District of Arizona, and Southern District of California.

Consolidation of Border Management

QUESTION: In the last Congress, proposals were made to consolidate various border management functions of the Departments of Transportation (Coast Guard), Justice (INS), and Treasury (United States Customs Service) into a new Office of Border Management Affairs within the

Treasury Department. S.2205 proposed moving the Coast Guard into the Treasury Department; S.2230 proposed moving both the Coast Guard and INS into Treasury.

In the past, I have favored consolidating these border management activities under the Attorney General -- not the Treasury Department. Do you believe that such consolidations have merit? Please explain the reasons for your position.

ANSWER: The consolidation of border functions would be a challenge to any manager. There are pros and cons to consolidating the responsibilities within either the Treasury Department or the Justice Department -- an obvious con for either being the potential for the creation of a "super function" that would be difficult to manage. Before a decision is made to consolidate, the ramifications of such a decision must be thoroughly reviewed.

Pay

QUESTION: The Anti-Drug Abuse Act of 1988 established a commission to review pay issues for Federal law enforcement officers. Recently, the FBI began a trial pay system for its New York field office employees which increases agents' pay and provides mobility allowance for agents moving into the New York area.

In your opinion should similar adjustments be made for other Justice law enforcement officers in New York, such as DEA and INS agents?

ANSWER: The FBI demonstration project authorizes a 25-percent differential in pay and up to $20,000 as a relocation bonus for FBI employees subject to agency directed mobility agreements assigned to New York City. The project, which will run for five years, was authorized to aid the FBI in recruiting and retaining experienced special agents and related support personnel for its counter-intelligence mission in New York City. Since the FBI is the only Justice organization with this function, the project was not extended to other positions or organizations. Based on difficulty in attracting and retaining employees for our key law enforcement occupations of Deputy United States Marshal, Border Patrol Agent and Correctional Officer, the Department has obtained Office of Personnel Management (OPM) approval for special rates for these occupations in New York City and a number of other geographic locations. While the Criminal Investigator occupation is included in the special rate study recently conducted by the New York Federal Executive Board (FEB), the survey data do not appear to support the need for a special rate for this occupation in terms of OPM's traditional criteria for approving special rates. Since the need for a special rate is based more on improving our ability to attract quality candidates to this and other entry-level occupations than by turnover or a lack of candidates as required to support special rates under OPM's criteria, there is no assurance OPM would approve special rates for the Criminal Investigator occupation under the FEB proposal.

Since the FBI pilot project was so recently begun, it would be premature to comment on whether the benefits accorded under the FBI's demonstration project should be extended to other law enforcement officers.

In connection with the Anti-Drug Abuse Act of 1988, the Immigration and Naturalization Service (INS) made specific reference to its concern with not being included under the provisions of section 6401 of the Act which authorize the Drug Enforcement Administration and the Federal Bureau of Investigation to pay bonuses to Criminal Investigators with bilingual abilities. The Department concurs with INS that it should have been covered under these provisions since its Border Patrol agent and other law enforcement occupations have bilingual requirements.

QUESTION: Regarding DEA, which now reports to the Director of the FBI, do you believe the grade level of DEA agents should be made comparable to that of FBI agents? Currently, DEA agents begin at Grade 07 while FBI agents begin as Grade 10 employees.

ANSWER: Generally, entry levels for the Department's law enforcement positions are established by each component in consideration of both the skills and qualifications required and the availability of candidates with those skills and qualifications in the labor market. For instance, the FBI, which is in the excepted service by statute and therefore can determine its own qualification requirements, has established very high minimum qualifications for applicants for its entry-level Special Agent positions, i.e., must be a graduate of a State-accredited law school, or must have a four-year college degree and have passed the Uniform Certified Public Accountant Examination, or must have a four-year college degree and 3 years of qualifying experience. The FBI has been able to find sufficient candidates with these qualifications willing to start at the GS-10 level. On the other hand, DEA and INS use the qualifications standards established in the OPM Handbook X-118, Qualification Standards for Positions under the General Schedule. DEA generally hires applicants with one year of investigative experience who are college graduates. DEA also appoints candidates at the GS-09 level who meet the X-118 requirement for one year of experience equivalent to the GS-07 level or graduate level education or a graduate degree. INS hires applicants with three years of general experience or a Bachelors Degree at the GS-05 level or at the GS-07 level under the same criteria used by DEA. Both DEA and INS have found sufficient candidates to meet their needs at these grade levels, although the quality of candidates in some locations has been of concern to them in recent years.

Assets Forfeiture Fund

QUESTION: In the Crime Control Act of 1984, Congress established the Assets Forfeiture Fund to account for the assets seized from criminals and for their depository. The following is a history of the annual receipts of the fund.

HISTORY OF ASSETS FORFEITURE FUND COLLECTIONS
($ IN MILLIONS)

FISCAL YEAR	AMOUNT
1985	$ 27.2
1986	93.7
1987	177.6
1988	207.3
1989 (EST.)	450.0
1990 (EST.)	470.0

I am interested in the reason why the FY 1990 Department of Justice budget request shows only a $20 million growth in asset forfeiture collections. This is almost unimaginable when we compare the enormous growth -- some $242.7 million -- in collections from 1988 to 1989. Particularly since this increase in collections was before the 175 new attorneys and 175 support staff were hired solely for assets forfeiture civil enforcement as a result of the recently enacted Omnibus Anti-Drug Abuse Act of 1988. Congress expected substantial growth in the fund due to the greater collection effort which, in turn, would support greater law enforcement, particularly with respect to drugs.

ANSWER: In the Anti-Drug Abuse Act of 1988, the U. S. Attorneys received $22 million to be used for asset forfeiture and civil enforcement activities. This funding will allow the U.S. Attorneys to hire 350 additional staff of which 175 will be Assistant U.S. Attorneys (AUSAs). In January, 171 AUSA and 171 support positions were allocated to the U.S. Attorneys' offices throughout the country. It is planned that the 171 AUSAs and support personnel will be on-board by June 1, 1989. Annualization of this increase (assuming an allocation of the remaining 4 AUSA and 4 support positions) will result in full year funding for the 175 AUSA positions in 1990. Since training of these new attorneys and support personnel will continue into the fourth quarter of FY 1989, and FY 1990 will be the first full year of performance by these personnel, the Administration has presented a conservative estimate for total receipts to the Assets Forfeiture Fund in FY 1990.

There are several reasons why it is best to be conservative in this matter. First, we are initially deploying the new resources against those cases that are most susceptible to quick resolution and prompt return. Both the FBI and DEA have produced target lists of cases in which a prompt return is likely. Moreover, as the General

Accounting Office (GAO) audit team has found, a high percentage of cash seizures go uncontested. This will also be an area of early opportunity. Subsequently, for FY 1990, this means that the new staff will be addressing the more complex and time-consuming portion of property under seizure. These cases can take up to 24 months to litigate or settle with the return on investment occurring much later.

The GAO audit team also noted that the government is receiving less than 10 cents on the dollar value (as appraised) from the forfeiture and sale of real property. This is primarily due to a high degree of mortgage debt against these properties, overly optimistic appraisals of market value, and difficulties encountered in obtaining full market value upon sale because of industry concerns over the marketability of title. Since real property makes up more than one third of the value of all assets currently seized, our estimates may need to be revised due to the probable return from liquidation of the inventory.

Debt Collection

QUESTION: I an interested in your initiative to use private counsel to recover civil debts. This initiative was enacted by the Debt Collection Amendments of 1986 (P.L. 99-78) and authorizes the Attorney General to contract with private counsel on a pilot program test basis in ten judicial districts. In your annual report on the program you stated that you had contracted with about 20 private counsel in five districts and were in the process of contracting with private counsel in five other judicial districts located in New Jersey, Georgia, Florida, Louisiana, and the District of Columbia. With the exception of the District of Columbia, you stated that the four other districts were selected because of large backlogs of Farmers Home Administration foreclosure cases. Why did you select the District of Columbia to participate in the program?

ANSWER: The District of Columbia was selected to participate in the pilot project by the Executive Office for United States Attorneys because the District currently has no automated debt collection system, and it was thought that our "COLLECTOR" system would help the debt collection people in the District to improve dramatically their ability to collect delinquent Federal debts. Secondly, because this is a pilot project, we thought it was a good idea to have "COLLECTOR" operating here in Washington where we can demonstrate it to interested persons from the Office of Management and Budget, the General Accounting Office, key Congressional staff members, and debt collection officials from our Federal agency clients who might be looking for automated solutions to their debt collection problems. Having "COLLECTOR" here permits its demonstration and evaluation without incurring the expenses involved in traveling to distant sites.

QUESTION: You stated in your annual report that the private attorneys will help collect the debts referred by the Departments of Education and Housing and Urban Development, and the Veterans and Small Business Administrations. The Internal Revenue Service (IRS) has many recalcitrant debtors who owe the Government billions in delinquent taxes. I understand that you will not be referring these debts to private counsel. Could you tell us why these debts are not being referred? What other types of civil debt will not be referred? Finally, why did you determine not to send civil debts over $25,000 to private counsel for litigation?

ANSWER: The Federal Debt Recovery Act of 1986 is an amendment to 31 U.S.C. §3718, and the application of 31 U.S.C. §3718 is limited by 31 U.S.C. §3701(d), which states in relevant part:

> (d) Sections ... and 3716-3718 of this title do not apply to a claim or a debt under, or to an amount payable under, the Internal Revenue Code of 1954 ..., the Social Security Act ..., or the tariff laws of the United States.

Therefore, we read the applicable law to prohibit us from referring IRS debts and debts arising under the Social Security or tariff laws to private counsel for litigation.

Finally, the decision not to send civil debts over $25,000 to private counsel at the beginning of the pilot was a compromise negotiated with the pilot district United States Attorneys to help overcome their initial resistance to the project. The United States Attorneys feared that debtors owing large amounts of money would be more likely to contest actively litigation brought against them to collect these sums. We did not want private counsel bringing such suits in State or local courts, many of which are far removed from the United States Attorneys' Offices, and then, when the debtors contested the claims, turning the cases back to the United States Attorneys to be litigated in distant sites and before State and local judges who might be unfamiliar with, or even hostile to, favorable precedents we had established in the Federal courts. This does not seem to be an insurmountable problem since the United States Attorney in Detroit, where private counsel are bringing all of their cases in Federal courts, has already indicated that he is prepared to send private counsel cases over $25,000 for collection. We believe that if this works well in Detroit, United States Attorneys in the other pilot districts will follow suit.

QUESTION: The Attorney General's authority to contract with private counsel will expire on September 1, 1990. Since you only began referring cases to private counsel in the Fall of 1988, do you believe that the legislation should be extended to gain the private attorney collection experience needed to make program decisions? Please explain your plans regarding extending the program.

ANSWER: We agree that the pilot program is much more likely to produce meaningful data if it is extended. We have suggested to the Office of Management and Budget (OMB) that a two-year extension seems appropriate and believe that OMB supports such an extension.

Our budget requests for FY 1989 and FY 1990 were premised upon extending the pilot to ten districts as called for in the Federal Debt Recovery Act of 1986 during 1989 and then to an additional 24 districts in 1990. We believe that our automated approach will eventually enable us to consolidate the debt collection staffs in several United States Attorneys' Offices into one location where "COLLECTOR" can process debt collection litigation much more efficiently than is presently done without the benefit of sophisticated computers. For example, under present law, we might be able to consolidate the debt collection operations of several United States Attorneys' Offices within a single State into one location which could handle the entire State quite effectively.

QUESTION: Your budget request includes an increase of 13 positions and $3.5 million for the private attorney debt collection initiative and $5 million for United States Attorneys' debt collection efforts. How will these positions and resources be used? Will any of the funds for the private attorney initiative be used to pay private attorney fees? If not, when do you anticipate requesting appropriations to pay for private attorney fees? Do you plan to request any additional appropriations for this program? If additional appropriations are anticipated, when would these requests be made and for what purpose would they be used?

ANSWER: Generally, we do not need appropriated funds to pay private counsel their fees for collection litigation because our contracts with them call for contingency fees. That is, private counsel are to be paid a percentage of what they collect as their fee and if they don't collect anything, they don't earn any fees. On the other hand, there are certain kinds of collection cases where contingency fees are not appropriate. Examples include bankruptcy and foreclosure actions. In these limited areas, some of the appropriated funds may have to be available to pay private counsel who submit bids to handle foreclosure cases, for example, on a flat rate basis ("X" dollars per foreclosure) rather than on a contingency fee basis. We understand that this is in line with the standard procedures in the debt collection industry, and that private counsel should bid bargain rates for our business because we should be able to give them significant numbers of such cases.

The money and positions we seek for the private attorney pilot project will be used to expand our automated "COLLECTOR" system as set forth above in the prior question. The money will enable us to acquire the computers and related telecommunications equipment and services for the expansion and to pay a private contractor to operate the Central Intake Facility (CIF) which is essential to our concept. Some of the money, of course, will also be used to pay for the additional people we seek to enable us to expand the system as planned. We now see, however, that if the pilot is to grow and reach its full potential, we will need more people to help implement it. These people are not lawyers. We intend to hire people with experience in installing automated systems, training the users of the installed systems, some capable of doing computer programming, doing the post-installation follow-up required to get a system running smoothly, etc.

At this time, we do not anticipate an additional appropriation request for this pilot project for FY 1990.

The United States Attorneys will use the $5 million requested to pay for costs and services attendant to debt collection work. Currently, debt collection expenses must compete with all other litigation expenses in the United States Attorneys' budgets. With the many competing law enforcement functions, debt collection work often must give way to other pressing litigation needs.

The $5 million Fund will be use for urgently needed debt collection services such as: credit bureau reports, appraisers, auctioneers, financial investigations, skiptracing, United States Marshal overtime, and financial analysis.

The Fund will also be used to cover litigation costs for debt collection cases, costs related to seizures, and filing and satisfaction of liens, certified mailing, etc. Further, these resources will be used to improve the management and quality of our Financial Litigation Units through training.

QUESTION: What plans do you have to evaluate the cost-effectiveness of private counsel collection activities versus United States Attorney collection activities? I understand that private counsel and United States Attorneys will not always litigate comparable types of cases and, as a result, cost data on individual cases will be vital for making cost-effective comparisons. Cost data for individual types of cases handled by private counsel will be maintained by the Central Intake Facility. Last year you reported to us that the United States Attorneys' time reporting system does not capture resources by types of individual case.

ANSWER: The Central Intake Facility (CIF) will refer to private counsel two broad types of cases: cases from the United States Attorneys' backlogs (mostly cases in which the United States Attorneys have obtained judgments against the debtors but have lacked resources to follow up and collect on the judgments); and new cases coming into the CIF from our various Federal agency clients. In both instances, the United States Attorneys and the private counsel should get a similar mix of a variety of cases which should provide a reasonable data base for valid comparisons. For example, as new cases come to the CIF from our client agencies, the first case received for a given district will be sent to the United States Attorney, the second case received to private counsel "A", the third to private counsel "B", etc. While this may not be a completely random system, we programmed the CIF this way to try to ensure that both the United States Attorneys and the private counsel got as wide a variety of debts to collect as possible.

Although the United States Attorneys may not keep time data on particular types of cases, neither will the private counsel. However, the CIF will have data on both and from it we should be able to evaluate performance to some extent. We must remember that although a United States Attorney and any given private counsel may get a seemingly similar debt to collect, say, for example, a defaulted student loan, in one case the debtor may be employed at a good salary and relatively easy to collect from via wage garnishment, while the other debtor may not be working and have few attachable assets. Therefore, we must be somewhat careful about jumping to conclusions as to the relative cost-effectiveness of the United States Attorney on the one hand and the private counsel on the other.

In any event, we believe that the CIF will provide sufficient data overall to make sensible evaluations. In addition, the Federal Debt Recovery Act of 1986 assigns to the Comptroller General the function of auditing our performance under the several provisions of the statute, and we feel certain that the Comptroller will be able to perform this task from the data available at the CIF and elsewhere.

Finally, please rest assured that we will be taking every step we can to ensure that valid comparisons can be made to evaluate the performance of all of the participants in the pilot project because it certainly is in this Department's best interest to see that the delinquent debts, our client agencies send to us, are collected in the most effective manner possible.

QUESTION: What changes have been made to capture United States Attorney resource data by type of individual case?

ANSWER: Since last year, no changes have been made in the capture of United States Attorney resource data by type of individual case. United States Attorneys' offices report resource utilization information through the USA-5, Monthly Resource Summary Report. This report provides attorney, paralegal, and support time spent on Management and Administration, eleven broad categories of criminal activity, twelve broad categories of civil activity, and debt collection activity. There are no automated links between the information reported through the USA-5 and information in the caseload and collection management system. We are planning to begin a feasibility study of linking attorney time to specific cases this fiscal year.

QUESTION: Last year you told us that the increased data capture capabilities and additional functions which will be available under the EAGLE initiative will bring about greatly increased collection productivity at United States Attorney Offices. I understand that the collection capabilities and additional functions available in the automated collection system used in the private attorney initiative also can bring about increased collection productivity. What efforts are underway to avoid duplication of the EAGLE system? Also, what issues need to be addressed before the system used in the private attorney initiative can be used at other United States Attorneys' Offices?

ANSWER: None. We have been assured by technical people that the "COLLECTOR" system being used in the pilot can be made compatible with almost any computers the Department may select in the EAGLE procurement. As we understand it, the selection of certain computers for EAGLE might necessitate the creation of a software "bridge" for compatibility but, we are told, this is a fairly easy task. On the other hand, we anticipate that as "COLLECTOR" grows and is installed in more than the ten original pilot districts, we will "migrate" its software to a more universally used language than that in which it is presently written.

Civil Liberties Act Of 1988

QUESTION: On August 10, 1988 the Civil Liberties Act was signed into law. This Act provides for one-time payments of $20,000 to be made to Japanese Americans who were interned in camps during World War II. Title I of the Act requires the Attorney General to identify and locate the estimated 60,000 eligible individuals, or their survivors, and make payments "as appropriations for this purpose are made available." $1.5 billion was authorized for these payments and not more than $500 million can be appropriated in one year. The FY 1990 Reagan budget requested $20 million to begin payments to eligible persons. The Bush budget amendment, I am told, puts the new program in the "flexible freeze pot."

How are your efforts at identifying persons eligible for this payment going?

ANSWER: We have found the names and detailed identifying information on more than 110,000 internees through the National Archives. This information is being supplemented by searches for names of individuals in unusual circumstances, such as voluntary evacuees. Before the end of this fiscal year, we believe we will have documentary information on the entire class of potential eligible individuals except for 100 to 300 "special case" persons who require additional research or investigation.

Eligible individuals must also be located. It is estimated that of the 120,000 internees, there are now 60,000 surviving. At this time, we have current address information for 45,000 individuals believed to be eligible for payment.

QUESTION: Since payments are to be made to eligible persons based on birth order, what amount of certitude do you have that all those eligible have been identified?

ANSWER: It must first be clarified that the law does not require that payments be made in this order, but states that the Attorney General "shall endeavor" to make the payments in the said order. Nonetheless, we are making every effort to find the oldest eligible. We are not relying on these elderly individuals to contact us. First, we have created a data base which can be sorted by age. Second, we are using information from official sources including Social Security to locate eligible persons. This is especially valuable in the case of the elderly, since many are receiving Social Security, medicare or medicaid benefits. Third, the elderly have been given special emphasis in our outreach efforts. We are soliciting and receiving support from the Japanase American community to volunteer information on family members. The oldest individual we know of at this time is 106.

QUESTION: Given our bleak fiscal situation and these new emerging initiatives like securities fraud and savings and loan investigations -- not to mention our escalating war on drugs -- do you feel we are able to make these payments at this time?

ANSWER: Technically, enough data have been collected to launch the program at any level of funding the Congress may support, provided, of course, that sufficient funds are provided to administer the program. For practical reasons, it is in the best interest of all concerned to expedite the administration of this law. It is estimated that 200 eligible individuals die each month; 1,200 since the law was passed. For each of these individuals, the next-of-kin eligible to receive payment must be identified and located, greatly complicating the verification processes and possibly compounding the administrative cost.

Securities Fraud

QUESTION: Earlier this year, you announced the establishment of task forces in six cities to combat fraud in the Nation's Securities and Commodities Markets. I understand people and resources from a number of Federal regulatory and investigative agencies will be combined to form the groups in New York, Chicago, Denver, Kansas City, San Francisco, and Los Angeles. On February 1, 1989, an

article appeared in the New York Times reporting you as stating 15 prosecutors would come from within the Department of Justice from "extra slots made available as part of the comprehensive drug legislation passed last year." While I certainly support efforts to reduce White Collar Crime, I don't believe these new task forces should come at the expense of our efforts to enforce our drug laws. Do you believe you are following the intent of Congress by allocating some of the new attorney positions provided in the 1988 Drug Bill to a White Collar Crime Program initiative?

Where is the reprogramming request to begin this new program? Harold Stassen once said, "I don't care to be involved in the crash landing, unless I can be in on the takeoff," and neither do we.

ANSWER: As a result of the Anti-Drug Abuse Act of 1988, an additional 471 Assistant United States Attorney (AUSA) positions were authorized. To date, 443 have been allocated. Consistent with Congressional proceedings, the positions have been allocated for intensifying efforts in the areas of asset forfeiture, drug investigation and prosecution, and other law enforcement including securities and commodities fraud. The allocations were in accordance with Congressional intent expressed in the Floor Manager's report of October 21, 1988.

Thus, 15 AUSA positions were allocated to the new securities and commodities fraud Law Enforcement Task Forces. The initial allocations are as follows: Manhattan, 6; Chicago, 3; Los Angeles, 3; San Francisco, 1; Kansas City, 1; and Denver, 1. All new task forces will operate as a part of the United States Attorney offices involved.

Savings and Loan Investigations

QUESTION: As you stated in testimony before the Senate Banking Committee, our country is facing a major crisis of fraud in the savings and loan industry. Clearly one-quarter of the failures were a direct result of fraud against the Government and insider abuses. I understand the amended Bush budget includes a $50 million initiative aimed at increased investigative and prosecutive efforts in this area.

Will this $50 million initiative come from the funds available to the Federal Savings and Loan Insurance Corporation (FSLIC)?

How will this increase in funding be distributed within the Department of Justice?

Will you also be requesting a supplemental to begin these investigations in FY 1989? If so, what will be your source of funding? Will you be recommending an offset from another Department account?

ANSWER: The Administration's financial institutions fraud package includes a $50 million authorization for three years beginning in FY 1989. This new budget authority will not be funded by the FSLIC but will require direct appropriations.

The funds will be distributed in the following way: $25 million will go to the FBI for 236 agents and their supporting staff; $21.7 million will go to the United States Attorneys for 118 Assistant United States Attorneys, their supporting staff and automated litigation support; $2.6 million will go to the Criminal Division for 24 attorneys and their supporting staff; and $678,000 will go to the Tax Division for 6 attorneys and their supporting staff.

On March 24, 1989, the President forwarded the 1989 supplemental request for this initiative to Congress. The package identified the necessary offsetting decreases. For the Department, they include reductions of $426,000 under the flexible freeze. 1990 budget amendments will be transmitted imminently.

Legal Services For The Poor

QUESTION: The Legal Services Corporation has submitted a $295 million budget request for FY 1990 -- roughly $13 million below the amount provided the program last year. The Reagan Budget for the FY 1990 requested no funding for the Legal Services Corporation and the Bush amended request makes no mention of the program at all.

As our Attorney General and chief legal officer, what is your position with regard to providing legal services to the poor?

ANSWER: As you know, the Legal Services Corporation (LSC) is an independent corporation, not under the purview of the Justice Department. Thus, I believe comments on the budget of the LSC should be deferred to the Corporation and the Administration.

As one of the originators of legal services programs in my hometown of Pittsburgh, Pennsylvania, I personally view legal assistance programs for the poor with favor, provided they are confined to providing professional services and not politically activist counsel and advice. During my tenure as Governor of Pennsylvania, I insisted upon such restraints so that the poor were served and not abused. Moreover, given Federal budget restraints, legal services must share with other components of government in the effort to reduce spending, even on worthwhile initiatives.

QUESTION: Can you tell me what the Bush Budget recommends in funding for the Legal Services Corporation in FY 1990?

ANSWER: Under the Bush budget, the LSC could be financed with funds included in the "residual" category of President Bush's budget.

The Bush budget advances many specific proposals, including full funding of means-tested entitlements, freezing Federal retirements cost-of-living adjustments for one year and increasing funding for homeless initiatives. The Bush budget does not propose specific budget authority or outlay amounts for spending that falls into the flexible freeze or "residual" category of non-defense (mostly) discretionary spending. Rather, the Bush budget proposes spending $136 billion on all programs that would be funded from this amount, with the details of that spending to be negotiated with Congress.

Drug-Related Murders

QUESTION: A record 372 people were killed in the District of Columbia during 1988 -- an increase of some 64 percent in just one year. The nation's capital now has the highest murder rate in the country, with experts now estimating as many as 600 murders in 1989.

Approximately 60 percent to 70 percent of murders committed in the District of Columbia are drug-related and, we are told, this alarming increase in the murder rate is directly related to the drug epidemic engulfing the city and the activities of a growing number of drug trafficking organizations now operating in the city.

I understand you have announced the establishment of a drug homicide strike force to focus our prosecutive and investigative resources on the rising number of homicides related to narcotics trafficking organizations operating in Washington.

What is the status of this new strike force? How many new attorney positions do you intend to fill? What impact do you see this strike force having on reducing drug-related murders in the District of Columbia?

ANSWER: The Drug Homicide Strike Force in the District of Columbia United States Attorney's office is fully operational. Five senior Assistant United States Attorneys, under the direction of Executive Assistant United States Attorney William R. Martin, have identified 18 separate cases involving drug-related execution style homicides. To date this has resulted in one indictment, Craig Williams, with more to follow soon.

As of February 11, 1989, 204 of 233 Assistant United States Attorney positions were filled in the District of Columbia. The remaining positions will be filled as quickly as practicable.

While it is too early to tell, it is anticipated that the new Drug Homicide Strike Force will have an impact on drug-related murders. The new Strike Force is expected to have its greatest impact in pursuing the prosecutions of criminal organizations responsible for a number of homicides.

In addition, the United States Attorney's office plans to prosecute more narcotics cases in United States District Court. Mandatory minimum sentences in United States District Court are more punitive and thus may serve to remove career narcotics criminals from the streets of the nation's capital.

Department of Justice Reorganization

QUESTION: The 1988 Anti-Drug Abuse Act Requires the Director of National Drug Policy, in consultation with the Attorney General, to study possible reorganizations within the Department of Justice.

What is the status of this study?

What components within the Department do you believe should be subjected to a reorganization study. Could you explain why?

ANSWER: A study and report on the enhancement of our use of civil enforcement tools, such as asset forfeiture, in combatting narcotics crime, is required by the new drug law and is now underway in the Criminal Division. I anticipate working closely with the Director of National Drug Control Policy to assure continued improvement of coordination and cooperation among all agencies with narcotics control responsibilities.

In regard to other possible organizational changes, like any good manager, I intend to review the management and structure of the entire Department in order to determine how to make the most cost effective use of our limited resources. Upon evaluation of this review and consideration of the Department's senior managers' views, I will recommend what changes may be necessary to streamline and improve the Department's overall operations to better address all our priorities, including the war on drugs. A review of the Immigration and Naturalization Service, which has grown in size by more than 50 percent in the past eight years, is underway.

Organized Crime Drug Enforcement Transfer

QUESTION: Section 1055 of the Anti-Drug Abuse Act of 1988 mandates that the Attorney General submit one unified budget request for all expenses relating to all Federal agencies participating in the Organized Crime Drug Enforcement (OCDE) Task Force program. Beginning in 1990, the Attorney General will make reimbursements to the involved agencies as necessary. This action was intended to provide flexibility among task forces and to allow the Attorney General to reallocate resources among participating agencies. It was also intended to ensure that the

task forces function as a unit, without competition for resources.

There is concern, and quite a bit of grumbling by affected agencies, that actual reimbursement occurs. If you use your authority to reduce the level of reimbursement to under that assumed in the budget request -- of which the various departments have already committed resources-- what impact will this have on their operations?

What assurances can you give this committee that the agencies will, in fact, receive the level of funding projected in your request to reimburse the positions they have already committed to this purpose?

ANSWER: As you know, the Anti-Drug Abuse Act of 1988 allows me the flexibility to reallocate resources among the organizational components of the task forces and between regions; however, such reallocations are not planned at the present time. I am pleased to report to you that this entire effort has had the utmost degree of cooperation among all participating agencies. We anticipate continuation of the good working relationships that have developed between all the parties involved in this effort.

As long as the participating agencies can sufficiently document that expenses went towards OCDE Task Force cases, the full amount will be reimbursed. Therefore, there will be no adverse impact on the operation of the affected agencies. This process will be closely monitored. Any problems will be discussed at the Washington Agency Representative Group level, which consists of representatives from all of the participating agencies.

Telemarketing Fraud

QUESTION: Mr. Attorney General, I would like at this time to ask you a few questions about the Justice Department's recent efforts to combat the important national problem of telemarketing fraud. As you know, the Federal Trade Commission (FTC) has estimated in 1988 that losses from telemarketing fraud exceed $1 billion per year.

What has the Department of Justice done in each of the last three years to combat telemarketing fraud?

What amount of resources has the Department of Justice committed to the problem of telemarketing fraud in each of the last three years?
What amount of resources does the Department intend to commit during the next year to address telemarketing fraud?

Are the existing criminal laws sufficient to address telemarketing fraud or do you feel that amendments to existing law or new laws are required to enable the Justice Department to effectively combat the problem?

ANSWER: The Justice Department has placed a high priority on prosecuting telemarketing fraud. As recently as October 1988, the Economic Crime Council (Council), an advisory group created in May 1983 by Order of the Attorney General, reaffirmed that serious telemarketing fraud is among several areas deserving special emphasis. The Council was re-authorized by Order of the Attorney General dated March 17, 1987. It is composed of 23 United States Attorneys as designated by the Associate Attorney General; senior officials from the Criminal, Civil, Tax, and Antitrust Divisions and the Federal Bureau of Investigation; representatives from the Inspector General community, the Department of the Treasury, and the United States Postal Inspection Service. The Associate Attorney General serves as Chair of the Council and the Chief of the Fraud Section, Criminal Division is the Executive Director of the Council. The Council has not only emphasized the importance of prosecuting serious telemarketing fraud, but it also supported preparation of "How-to Investigate and Prosecute" manuals that were prepared under the direction of the Subcommittee on White Collar Crime of the Attorney General's Advisory Committee. A manual dealing with "boiler room" fraud (telemarketing fraud) was published in December 1987.

Criminal prosecutions of telemarketing fraud are handled mainly by the 93 United States Attorneys. Occasionally, the Fraud Section of the Criminal Division will handle a telemarketing fraud case when asked to do so by a United States Attorney. Generally, the Fraud Section provides assistance to the United States Attorneys as needed. This assistance ranges from advice about investigative strategies and reviewing proposed indictments to assistance in the drafting of indictments and trial preparation and trials.

Two geographic areas in the United States where there has been significant incidence of telemarketing fraud and "boiler room" operations are the Southern Florida area and the Southern California area. The United States Attorney offices for the Southern District of Florida and the Central and Southern Districts of California have emphasized prosecuting this activity, and have worked closely with State and local law enforcement agencies in identifying and prosecuting telemarketing fraud. In the Southern District of Florida, the United States Attorney has historically employed local prosecutors who have been cross-designated as Special Assistant United States Attorneys, and has designated Assistant United States Attorneys as Special State's Attorneys to help combat the problem of telemarketing fraud.

Due to the way statistical data are captured, it is not possible to provide exact resources that have been utilized over the last three years. In some districts, however, over 10 Assistant United States Attorneys may be involved at any given time in the investigation and prosecution of such offenses. Now that the United States

Attorneys have the benefit of receiving an additional 471 attorneys to work in the Asset Forfeiture and Narcotics areas, it is expected that existing resources can be directed toward the fraud area. Consequently, telemarketing efforts should be significantly increased in 1989 and 1990.

The existing statutes, especially the conspiracy statute (18 U.S.C. 371); wire fraud (18 U.S.C. 1343); mail fraud (18 U.S.C. 1341); Interstate Transportation of Stolen Property (18 U.S.C. 2314); and credit card access statutes (18 U.S.C. 1029), appear to be adequate to address the problem. Certain States, such as California and Florida, have recently enacted laws which require persons who solicit funds over the telephone to register with the appropriate State agencies under penalty of criminal prosecution. These State statutes have assisted in the investigation and prosecution of such offenses.

United States Attorneys

Attorney Resources

QUESTION: Last year, one United States Attorney was quoted in press reports as saying that his office had not received a fair share of attorney resources from the Department and that comparable districts have more prosecutors than his office.

Does an imbalance in attorney caseload exist among the 94 United States Attorneys Offices?

ANSWER: Attorney caseloads per district vary. The national average caseload in FY 1988, as reported in the United States Attorneys Statistical Report, was 128.4 cases per attorney workyear. It is interesting to note, however, that the average in the Southern District of New York was only 81.3 cases per attorney workyear while the average in the Eastern District of Arkansas was 250.9 cases per attorney workyear.

This disparity is why we do not consider caseload per attorney to be a true indicator of the staffing needs of a district. Caseload numbers do not take into account the complexity of a case, i.e., number of defendants, type of violation, etc. While two cases may be of equal importance, it is certainly true that prosecution of a Continuing Criminal Enterprise or insider trading violation is much more difficult and time consuming than prosecution of a migrant bird case. Each United States Attorney, in consultation with client agencies, determines the priorities of his/her district in response to the crime problems of the area.

QUESTION: Which United States Attorney Offices have the greatest need for additional attorney resources?

ANSWER: It is difficult to say that one office has a greater need for resources than any other. Rather, the need varies by program. For example, it is unfortunately true that no judicial district lacks a drug problem. Districts located in metropolitan areas face enormous narcotics trafficking activity, including massive and continuous importation through airports and seaports; major entrenched distribution organizations; drug laundering activities; and, of course, a large drug user population. Rural districts also face enormous problems in that miles of coastline or terrain, which is difficult for law enforcement personnel to patrol, exist where drug dealers can either manufacture, cultivate or distribute drugs.

The Anti-Drug Abuse Act of 1988 provided the United States Attorneys with additional funding necessary to address the drug problems throughout the country. After the new prosecutors are hired, trained and handling substantial caseloads, we will be able to assess the impact of the new resources and the need for additional prosecutors in specific districts.

The area of securities and commodities fraud serves as another example of districts' varying need. Only certain districts have either securities or commodities exchanges within their jurisdiction or significant fraud of this nature. Therefore, resources have been allocated to those districts with an identified need. The same reasoning holds true when you consider the Savings and Loan and bank fraud crisis facing our nation.

QUESTION: Has the Department conducted a study to determine what criteria should be used in deciding when a United States Attorney Office's capacity has been reached and more attorneys are needed?

ANSWER: The Department has not conducted such a study. Historically, the United States Attorneys have come under some criticism from the Office of Management and Budget and Congress for lacking a resource allocation process that uses a "case-weighing" system.

The Executive Office for United States Attorneys is considering funding a formal "case-weight" study. The case-weights would be based on such important case factors as a timetable for the current case inventory to reach the resource intensive stage, potential for cases to be settled out of court, likelihood of cases to be settled by plea bargain, etc. The decision to pursue this effort will depend on the United States Attorneys' appropriation level.

QUESTION: In deciding how to allocate new positions among the United States Attorneys, does Justice ensure that it is using common data in identifying demands?

ANSWER: Data used as reference information in the allocation process is gathered from a variety of sources.

The most common sources of information include the Administrative Office of the United States Courts, the United States Attorneys' casetracking system, the United States Attorneys themselves, and other Departmental components.

QUESTION: What criteria are used?

ANSWER: The criteria used to allocate resources vary based on the appropriating language. For the past several years, the utilization of United States Attorneys' funding level increases have been targeted by the Congress. For example, Operation Alliance was a Southwest Border Initiative which involved only six districts. Therefore, 88 other districts did not receive any Operation Alliance resources to fight the drug battle despite their need.

The Anti-Drug Abuse Act of 1988 provided the United States Attorneys with $69 million. The authorization language emphasized that the funds were to be used primarily for asset seizure and forfeiture activities and to prosecute narcotics cases. Therefore, the criteria used to allocate these resources included, but was not limited to, the inventory of seized property awaiting forfeiture, current drug and forfeiture caseloads, and input from the United States Attorneys.

QUESTION: Are these criteria consistent among the districts?

ANSWER: The same criteria are used for all districts.

QUESTION: How are they verified?

ANSWER: Criteria are developed to satisfy the appropriation language themes. In developing criteria, input is solicited from United States Attorneys and the Attorney General's Advisory Committee. The data used to satisfy the criteria identified are verified to an extent by the office review program of the Executive Office for United States Attorneys. The review program utilizes volunteer peer reviewers from the Offices of the United States Attorneys. The reviewers are experienced Assistant United States Attorneys, administrative officers and financial litigation personnel who not only look at case statistics but interview judges and client agencies to assess the adequacy and utilization of authorized staffing levels and the need for additional resources.

QUESTION: What happens when imbalances are identified?

ANSWER: Every effort is made to correct imbalances when they are identified. However, the organization's ability to correct imbalances quickly is limited. Assistant United States Attorneys are not transferred to other districts to correct imbalances. Rather, vacant positions are subject to redistribution. This limits the reaction time.

QUESTION: The Anti-Drug Abuse Act of 1988 provided the Department with $69 million to hire additional attorneys to work on asset seizure and forfeiture activities and to prosecute narcotics cases.

Please provide the committee with a listing of the number of attorneys each United States Attorney office has been allocated under the provisions of this act and the number of positions each office has filled to date.

How many positions are devoted to asset forfeiture/civil enforcement and how many devoted to narcotics/organized crime drug enforcement?

ANSWER: A listing of the number of attorneys allocated by district under the provisions of the Anti-Drug Abuse Act of 1988 follows. Of the total 443 attorneys allocated, 209 attorneys have been hired since October 1, 1988. With the exception of Asset Forfeiture/Civil Enforcement Assistant United States Attorney (AUSA) positions, new AUSA positions are indistinguishable from vacant, pre-Drug Bill AUSA positions. Of the total positions allocated, 171 AUSA positions will be devoted to Asset Forfeiture/Civil Enforcement, and the remaining 272 will be devoted to Narcotics, Organized Crime Drug Enforcement and other criminal litigation.

U.S. Attorney District	Allocated	Hires From Oct. 1988 - March 25, 1989
Alabama/MD	3	1
Alabama/ND	5	4
Alabama/SD	2	2
Alaska	3	3
Arizona	4	5
Arkansas/ED	2	1
Arkansas/WD	2	0
California/CD	24	13
" " /ED	5	5
" " /ND	7	9
" " /SD	6	9
Colorado	3	8
Connecticut	6	4
Delaware	2	2
Dist. of Columbia	28	36
Florida/MD	12	10
" " /ND	5	1
" " /SD	42	18
Georgia/MD	3	4
" " /ND	5	5
" " /SD	2	1
Guam	1	0
Hawaii	3	1
Idaho	2	3
Illinois/CD	3	1
Illinois/ND	12	3
" " /SD	4	1
Indiana/ND	3	1

U.S. Attorney District	Allocated	Hires From Oct. 1988 - March 25, 1989
Indiana/SD	3	4
Iowa/ND	3	2
" "/SD	2	1
Kansas	4	1
Kentucky/ED	2	0
" " /WD	4	2
Louisiana/ED	3	4
Louisiana/MD	3	0
" " /WD	2	1
Maine	2	0
Maryland	6	8
Massachusetts	4	5
Michigan/ED	8	4
" " /WD	3	3
Minnesota	3	2
Mississippi/ND	3	4
" " /SD	3	2
Missouri/ED	4	2
" " /WD	6	3
Montana	1	0
Nebraska	1	4
Nevada	4	5
New Hampshire	1	1
New Jersey	7	6
New Mexico	3	1
New York/ED	16	9
" " /ND	5	1
" " /SD	15	26
" " /WD	3	5
North Carolina/ED	1	2
" " /MD	2	1
" " /WD	2	2
North Dakota	2	2
Ohio/ND	4	3
" "/SD	3	0
Oklahoma/ED	2	0
" " /ND	2	2
" " /WD	3	3
Oregon	5	1
Pennsylvania/ED	6	15
" " /MD	4	4
" " /WD	3	4
Puerto Rico	3	2
Rhode Island	1	0
South Carolina	1	1
South Dakota	3	0
Tennessee/ED	2	2
" " /MD	2	1
" " /WD	4	4
Texas/ED	7	5
" " /ND	9	7
" " /SD	8	9
" " /WD	6	5
Utah	2	3
Vermont	2	1

U.S. Attorney District	Allocated	Hires From Oct. 1988 - March 25, 1989
Virgin Islands	4	0
Virginia/ED	8	9
" " /WD	2	3
Washington/ED	2	0
Washington/WD	3	2
West Virginia/ND	1	2
" " /SD	3	3
Wisconsin/ED	4	2
" " /WD	2	3
Wyoming	2	2
Total	443	362

South Carolina

QUESTION: I understand South Carolina will be receiving one additional Assets Forfeiture Attorney position as a result of increased funding provided in the 1988 Drug Bill. North Dakota received one additional of these positions -- I would have thought South Carolina's allocation would be greater than North Dakota's given that I-95 -- a major thoroughfare for the trafficking of drugs -- runs through the middle of the State and Charleston is the home of the second largest containership port in the country.

What factors were used to determine how to allocate the additional Attorney positions among the United States Attorney offices?

Will more be going to South Carolina?

ANSWER: The Drug Bill Assistant United States Attorney (AUSA) positions were allocated to address two related approaches to narcotics prosecutions. First, an additional 175 AUSAs were provided to increase the impact of asset forfeiture statutes. While forfeiture actions in FY 1988, resulted in $207 million of income to the Justice Assets Forfeiture Fund, the inventory of seized property awaiting forfeiture continued to grow. Forfeiture positions were allocated to address the potential for impact on illegal narcotics trafficking and the fruits of that illegal activity. Second, since unfortunately no judicial district lacks a drug problem, the forfeiture position allocations were structured in a way to try to avoid the creation of "safe harbors" for drug dealing. The United States Attorneys recognize that to a certain extent these two forfeiture allocation approaches may be competing themes and that forfeiture positions may need to be redistributed after the impact of the new AUSAs is measured. Thus, South Carolina, ranked 89th in FY 1988 with $26,824 in net forfeiture income, as compared to North Dakota, ranked 91st with $3,503, will be measured best after the district has had the opportunity to address pending forfeitures.

QUESTION: Are United States Attorneys encountering difficulty recruiting qualified attorneys to fill these new positions (asset forfeiture) and will United States Attorneys be able to fill all the new positions created by the Act within FY 1989?

ANSWER: There is not any great difficulty recruiting qualified attorneys to fill the asset forfeiture positions. In fact, compared to the earlier establishment of the Organized Crime and Drug Enforcement Task Forces (OCDETFs), attorney recruitment and hiring is much more rapid for asset forfeiture, exceeding the earlier OCDETF rate by 30 percent. As of April 13, 1989, 59 percent or 101 positions have been filled. Some accommodation problems have arisen, e.g., finding additional space in many districts and providing equipment and furniture quickly enough. However, we anticipate that all allocated asset forfeiture positions will be filled by June 1, 1989.

Organized Crime Strike Forces

QUESTION: As an Assistant Attorney General, you favored merging the Organized Crime Strike Forces into United States Attorney offices. Do you still favor such merger? Please explain your position.

ANSWER: As you probably know, I am currently re-examining the organization of the Organized Crime Strike Forces. One option under consideration is the merger of the Strike Forces into the offices of the United States Attorneys. The assimilation of Strike Force field offices into United States Attorneys Offices would place under the direct authority of the United States Attorney the Department of Justice assets designated to address traditional organized crime, and would allow the chief prosecutor of the district to more effectively and efficiently address traditional organized crime in a renewed initiative. It is noteworthy that the greatest success in addressing traditional organized crime in recent years has been experienced in the Southern District of New York, whose Strike Force field office was merged into the United States Attorney's Office a number of years ago. The recent well-publicized prosecutions in that district are an indication of what might be anticipated in other districts as a result of the assimilation of the local Strike Force field offices into the United States Attorneys Offices as Strike Force units under the direction of the United States Attorney.

QUESTION: In your opinion, how effective have Strike forces been? Are recent successful prosecutions due to the Strike Force organization, or to other factors such as the RICO and wiretapping statutes, and undercover investigative techniques?

ANSWER: The Strike Force field offices have played an important role in the prosecution of traditional organized crime. However, the recent successes against traditional organized crime are also due to the enhanced statutory tools provided the investigating agencies and prosecutors. These tools include the RICO statute and the wire interception statute.

QUESTION: In January 1988, the Attorney General issued a new order governing the Strike Forces and United States Attorney relationships. The 1988 order required United States Attorneys to develop plans for fighting organized crime in their areas. What is the status of those plans and what actions are you taking to ensure United States Attorneys comply with the order's planning requirement? What is the status of the Organized Crime and Racketeering Section's effort to meld the United States Attorneys' plans into a new national plan against organized crime?

ANSWER: The Strike Force chiefs have been directed to offer their full assistance to the United States Attorneys in the preparation of these plans, and the Chief of the Organized Crime Section has coordinated the matter with the Chairman of the Attorney General's Advisory Committee of United States Attorneys. The Organized Crime Section has received a number of these plans and based upon its review of the plans submitted, and other data, it is formulating a proposed national plan for my review. That process will be completed shortly.

Reorganization Study Required by the Anti-Drug Abuse Act

QUESTION: The Anti-Drug Abuse Act requires that the Director of National Drug Policy study whether reorganizations within Justice would be beneficial. Among the possible options would be combining the Organized Crime Drug Enforcement Task Forces and the Organized Crime Strike Forces into a new office, outside of the United States Attorneys' offices, which would report directly to the Criminal Division. What is your position regarding such an option? Please explain.

ANSWER: We plan to cooperate fully with the Director of the National Drug Policy in exploring options for reorganization. However, while we feel that there are some rough spots in the current system, there are no problems so major that continuous fine-tuning will not remove them. The Organized Crime Drug Enforcement Task Forces concept, while by no means perfect, has worked well, with impressive results.

I am currently reviewing the organizational placement of the Organized Crime Strike Forces. One option under consideration is merging the Strike Forces into the offices of the United States Attorneys. The option of merging the Task Forces and Strike Forces into a new office will certainly be considered as we work with Director Bennett in developing beneficial reorganization proposals.

Office of Justice Programs

Anti-Drug Abuse Funds

QUESTION: Drug abuse in the United States has persisted at a very high level throughout the 1980's. To help combat the problem, the Anti-Drug Abuse Act of 1986 provided Federal financial assistance to States for drug law enforcement. And, this past October, Congress passed the Anti-Drug Abuse Act of 1988 which further strengthened our commitment by providing $148.5 million in assistance to States for State and local narcotics control and justice assistance improvements. I am pleased to see President Bush's recently submitted budget included $150 million for grants to States and localities.

As a former governor and now Attorney General do you support a coordinated approach of Federal, State and local law enforcement in addressing the drug problem?

ANSWER: A fully coordinated and cooperative law enforcement effort is essential to addressing both the supply and demand sides of our nation's drug problem. But, State and local grants are only one aspect of the Federal, State and local partnership in the war against drugs.

Joint Federal, State and local law enforcement operations, intelligence and information sharing, cooperative user accountability initiatives, cross-designation and cross-deputizations, the availability of training and technical assistance, DEA's State and local task forces, Law Enforcement Coordinating Committee activities, and the Asset Forfeiture and Equitable Sharing program form the backbone of the partnership. Our commitment to coordination in order to assure the most cost-effective utilization of all law enforcement resources cannot be overstated.

Crime Prevention

QUESTION: The National Citizens Crime Prevention Campaign, which last year received a $2.3 million appropriation from this committee, has been zeroed out in the President's budget. Yet, the campaign generates $50 million in free public service advertising time and helps leverage State, local and private funding for thousands of crime prevention programs. What's more, McGruff the crime dog -- who is featured in the campaign -- is recognized by 96 percent of the teenage population and 99 percent of children ages 6 to 12 in the United States. McGruff is an incredibly popular symbol which is also being utilized in drug prevention efforts.

If we eliminate this program, aren't we throwing away a valuable and cost-effective Federal resource?

ANSWER: The Anti-Drug Abuse Act of 1988 incorporated into the Anti-Drug Abuse program the legislative purposes of the Justice Assistance Act State and Local Assistance program, from which these types of projects have been funded since 1984. The new combined program, which is titled Drug Control and System Improvement Grant Program, contains authority for these programs. As you know, President Bush has included funding for the program in his budget amendment.

QUESTION: The Office of Justice Programs manages the National Citizens' Crime Prevention campaign through a cooperative agreement with the National Crime Prevention Council. As a result, Federal funding for the program serves to stimulate matching private contributions. The campaign is a premier example of effective public-private partnership. Isn't this the type of arrangement we have been urged to encourage for the last eight years?

ANSWER: This project has been very successful and enjoyed much support from nonprofit and business organizations during the past ten years. It is our hope that the effectiveness demonstrated by the program will encourage continued support from the private sector.

Less-Than-Lethal Weapon

QUESTION: Your budget includes funds for the development of a less-than-lethal weapon. Now, in the Conference Report that accompanied the 1989 appropriation bill, the conferees stated that we expect the National Institute of Justice to expand on this research this year. What is the status on that? How much have you spent thus far?

ANSWER: Shortly after the Conference Report was approved and issued, the Institute opened negotiations with the Department of Army's Chemical Research, Development, and Engineering Center to continue testing of promising chemical compounds. To date, however, no funds have been obligated. An agreement with the Army to conduct a partial test this year for $250,000 is expected to be signed in the near future. Also, the Institute is negotiating with the University of Utah Medical School to conduct a test for $250,000 on another very promising compound which has a reaction time of 1/2 seconds. The Institute now believes that rather than investing $500,00 in one full test of one compound, that spending the same amount of money to proceed with partial testing of two compounds--one of which was unknown last year--provides a greater chance of finding something that works.

Statistical Program

QUESTION: I see that the budget contains a $1.4 million increase for a few statistical projects.

In view of the other areas of the budget which are being cut, what makes this such a priority?

ANSWER: The statistical series that are conducted by the Bureau of Justice Statistics are functions that must be conducted at the Federal level. The Bureau provides valuable criminal justice data and analyses that are used for decision making and policy making at all levels of government, and also by the media and the general public. The additional data which will be collected and analyzed will help key decision makers in determining the most important areas to apply limited resources.

Mariel Cubans

QUESTION: Once again, the budget proposes to rescind the 1989 monies appropriated to assist the States with the costs of incarcerated Mariel Cubans who committed crimes after being paroled into the United States by the Attorney General. And, no funds are requested for this program in 1990. Since 1985 the Congress has appropriated $5,000,000 each year to assist with such costs.

Please provide a chart displaying for each fiscal year beginning with 1985, the number of such persons incarcerated in each State and the amount granted to each State.

ANSWER: A chart is provided that reflects the Mariel Cuban grant awards from FY 1985 through FY 1988.

QUESTION: A year ago, we had great damage done to the Oakdale and Atlanta facilities due to riots by the Mariel Cubans. What is the situation as to them now; for instance, how many do we hold in prisons, and how many were returned in FY 1988?

ANSWER: No Mariel Cuban detainees were returned to Cuba in FY 1988; however, 43 have been returned through March 29, 1989. There are 2,330 Cuban detainees presently remaining in facilities.

QUESTION: At the time of our hearings on April 17, 1988, with former Attorney General Meese, the return of the Mariel Cubans had been interrupted by Castro due to the beginning of the Radio Marti Broadcasts. Mr. Meese forthrightfully declared that if the return of the Mariels was not resumed, the Department would seek a budget amendment to help with the incarceration costs. Subsequently, he consulted with the OMB and corrected his statement to say that no additional funds would be sought. Does not the Department have an obligation for those they have paroled within the community?

ANSWER: There are two classifications for the decisions on Cuban detainees: (1) Repatriation, and (2) Parole. The "Repatriation" detainees are those individuals the Department was attempting to return to Cuba when Castro refused to accept their return. Castro's decision not to accept these Cubans meant some would have to be set free, and more "community support" money would be required.

Mariel Cuban Program
Comparison By Year

State:	Number of Inmates Original Request				Number of Inmates Verified by INS				Inmate Months *				Award Amount			
	1985	1986	1987	1988	1985	1986	1987	1988	1985	1986	1987	1988	1985	1986	1987	1988
Alaska	3	...	3	...	2	...	3	...	24	...	32	...	$6,643	...	$6,945	...
Arkansas	...	5	20	20	...	5	16	19	...	45	155	190	...	$9,303	33,590	$39,483
Arizona	...	...	...	42	...	...	...	41	...	...	...	458	...	...	...	95,202
California	21	7	5	85	19	7	5	72	155	62	30	749	42,903	12,933	6,539	155,630
Colorado	...	...	4	4	...	...	4	4	...	...	41	36	...	...	8,898	7,478
Connecticut	...	22	18	23	...	22	18	23	...	244	194	229	...	50,844	42,120	47,522
Florida	706	1,022	889	1,008	679	947	810	870	7,270	8,989	8,337	8,637	2,012,290	1,873,678	1,809,442	1,794,178
Georgia	21	43	44	53	20	38	43	48	215	420	411	472	59,511	87,461	89,260	97,944
Idaho	...	3	2	1	...	3	2	1	...	36	16	12	...	7,504	3,544	2,493
Illinois	93	122	140	76	74	115	130	62	644	773	687	610	178,255	161,129	149,124	126,776
Indiana	...	...	...	11	...	...	...	10	...	...	...	111	...	...	...	22,948
Iowa	...	3	6	4	...	3	5	4	...	36	52	41	...	7,504	11,177	8,579
Kansas	...	13	10	16	...	10	10	11	...	109	88	106	...	22,713	18,997	22,096
Kentucky	...	...	2	3	...	...	2	3	...	...	24	18	...	...	5,209	3,766
Louisiana	...	18	11	4	...	18	10	4	...	84	117	48	...	17,592	25,365	9,971
Maine	...	...	...	1	...	...	...	1	...	...	...	12	...	...	...	2,493
Maryland	...	...	17	20	...	...	12	13	...	...	143	130	...	...	31,008	26,949
Massachusetts	...	...	...	33	...	...	...	25	...	...	...	286	...	...	...	59,383
Michigan	22	...	60	63	22	...	59	60	240	...	636	566	66,430	...	138,099	117,538
Minnesota	17	12	14	11	16	12	14	11	160	127	129	111	44,287	26,430	27,954	23,093
Mississippi	...	...	...	3	...	...	...	2	...	...	...	24	...	...	...	4,985
Missouri	...	...	...	22	...	...	...	21	...	...	...	248	...	...	...	51,489
Nebraska	...	5	3	2	...	5	3	2	...	47	36	24	...	9,886	7,828	4,985
Nevada	48	43	42	44	45	43	42	42	457	498	448	468	126,495	103,790	97,173	97,252
New Jersey	163	211	210	204	161	207	200	177	1,816	2,312	2,287	1,862	502,657	481,992	496,357	386,778
New Mexico	...	...	7	7	...	...	6	3	...	...	70	36	...	...	15,149	7,478
New York	363	464	469	512	287	456	435	474	3,272	4,533	4,777	4,984	905,669	944,773	1,036,794	1,035,258
Ohio	5	11	11	10	6	11	11	10	71	114	130	118	19,652	23,845	28,293	24,595
Oklahoma	...	...	10	15	...	...	8	14	...	...	95	151	...	...	20,646	31,373
Oregon	...	4	4	...	...	4	4	...	...	48	48	...	...	10,005	10,418	...
Pennsylvania	59	52	37	66	58	48	37	49	446	453	352	440	123,450	94,422	76,396	91,415
Rhode Island	13	...	17	19	11	...	17	18	100	...	169	179	27,679	...	36,635	37,177
South Carolina	...	14	10	9	...	8	9	8	...	96	75	91	...	20,010	16,328	18,799
Tennessee	...	...	1	2	...	...	...	2	...	...	...	24	...	...	...	4,985
Texas	216	247	178	170	199	225	167	148	1,925	2,175	1,770	1,327	532,828	453,380	384,101	275,702
Utah	...	7	5	5	...	6	5	5	...	32	58	35	...	6,733	12,681	7,306
Virginia	...	12	12	16	...	12	12	10	...	97	65	48	...	20,177	14,020	10,027
Washington	28	34	35	37	28	34	35	35	322	363	377	303	89,127	75,726	81,915	62,983
West Virginia	...	...	...	1	...	...	...	1	...	...	...	5	...	...	...	1,053
Wisconsin	95	130	120	118	94	128	118	111	947	1,263	1,189	1,121	262,128	263,320	258,187	232,842
Total	1,874	2,500	2,416	2,736	1,721	2,353	2,252	2,414	18,064	22,956	23,038	24,070	5,000,000	4,785,000	5,000,000	5,000,000

State Allocation Formula: The cost of each inmate per month times the number of inmate months for the respective State equals the total State allocation.

	1985	1986	1987	1988
Allocation	$5,000,000	$4,785,000	$5,000,000	$5,000,000
Inmate months	18,064	22,956	23,038	24,070
Cost of inmate per month	$276.79	$208.44	$217.03	$207.73
Actual average cost per inmate	$2,905	$2,025	$2,220	$2,071
Average number of months per inmate	10.5	9.7	10.2	10.0
Average annualization cost per inmate	$3,321	$2,501	$2,604	$2,493

* Rounded to the nearest month.

But, resources were never budgeted, thus resulting in Mr. Meese's declaration for a budget amendment to help with the incarceration and release costs. Mr. Castro has since repealed his previous denial to accept the return of these detainees, therefore, additional resources were not requested for this purpose.

Secondly, the "Parole" detainees are Cubans who are not going to be sent back at this time or who are not on the list. Most of these detainees are anticipated to be relocated within the community. Resources were previously budgeted for the necessary structured support (e.g. half-way houses) for these individuals.

Other Assistance Programs

QUESTION: The Department has consistently sought to cut Federal grants to State and local governments for law enforcement initiatives and juvenile and delinquency prevention. Congress, however, has generally restored the funds. Targeted for cuts again are Juvenile Justice programs ($63,800,000), State and Local Assistance programs ($3,497,000), and the Regional Information Sharing System ($13,000,000).

What evidence is there that the States will continue to finance programs to improve juvenile justice, and State and local assistance programs if the Federal Government totally eliminates its support?

ANSWER: Projects previously funded under the State and Local Assistance program are now authorized for funding under the combined Drug Control and System Improvement Grant program. Regarding the Juvenile Justice programs and the Regional Information Sharing System program, we cannot assure Congress that the programs will not cease to exist. However, funds have been provided to the States and locals for many years now and they have had ample time to determine if the programs are successful or promising and are worthy of funding. We feel that the States that are now participating in the Juvenile Justice program will continue to commit their resources to improve the juvenile justice system without the Federal Government's money and will be able to do so more successfully without the unyielding and strict requirements of Federal law. Each State has a different set of circumstances and, without the need to comply with Federal mandates, will be able to adjust its programs to meet its own local problems and conditions. In fact, since the funds provided to the States are not sufficient to cover the full cost of deinstitutionalization, separation, and jail removal, the States that do participate in the program are exhibiting their commitment to the goals of the legislation by their participation.

Regional Information Sharing System (RISS)

QUESTION: A year ago we had former Attorney General Meese telling the police chiefs that he supported the Regional Information Sharing System program but then we found out that he didn't support RISS enough to put it in the budget.

Mr. Attorney General, I see from an article you wrote for the January 1989 issue of The Police Chief, that you refer to RISS as "a program much prized by law enforcement personnel." In another article appearing in the November 1988 issue of The Police Chief, Richard Abell -- Assistant Attorney General in charge of Office of Justice Programs -- unequivocally confirmed his own commitment "as well as that of the Attorney General Meese and the Department of Justice, to the continuing support of Federal funding for the Regional Information Sharing System Program."

What is your position with regard to the Federal support of the Regional Information Sharing System?

There were no funds requested for RISS in FY 1990 Reagan budget? What about the Bush budget amendment?

ANSWER: No funds were requested for the RISS program in President Reagan's budget or President Bush's budget. Although I am sure the program is an effective tool for State and local law enforcement agencies, given the scarce resources available for the Department, there are simply not enough dollars to fund every worthwhile program. Since 1980, Congress has provided $90 million for the projects and it is now time for the States and localities to pick up the costs.

Immigration and Naturalization Service

Dallas Regional Office

QUESTION: In 1987, the Immigration and Naturalization Service transferred some responsibilities of the Southern Regional Office from Atlanta, Georgia to Dallas, Texas. Rather than having all South Carolina casework handled through Atlanta office, certain petitions now go directly to Dallas for processing.

This move was an attempt to increase productivity and streamline the processing of Immigration petitions. Unfortunately, the reverse was achieved and many applicants residing in South Carolina, and other Southern States had petitions simply disappear -- even those received by registered mail. (I submit for the record examples of two such cases.)

JUL 29 1988

NANCY D. HAWK
ATTORNEY AND COUNSELLOR AT LAW
145 KING STREET, SUITE [illegible]
P. O. BOX [illegible]
CHARLESTON, SOUTH CAROLINA 29402

July 27, 1988

Mr. Joe Maupin
Office of Senator E.F.Hollings
U.S.Custom House
East Bay Street
Charleston,South Carolina 29401

Dear Joe:

During my conversation with Ceil yesterday regarding the problems with the Southern Regional Service Center in Dallas, I told her I would keep you all informed as to what was going on.

I am enclosing a perfect example of what we are experiencing with this office. You will note that their receipt for this I-140,Receipt number SRC-88-310-0132 is dated July 21, 1988 and was received by us today. You will also note that we have a signed certified receipt on this that shows that we mailed that I-140 on June 15 and it was received and signed for on June 17, 1988.

That office indicates that adjudication time is 2 months, consequently we take that to mean the middle of August; however, if they wait more than a month to receipt the form, this is impossible.

If we make inquiry about the application, we would be told that it was not received until July 21, 1988, which of course is just not true.

This information is furnished your office, because it would do absolutely no good for us to notify their District Director that this is going on.

Sincerely,

Libby

Libby D.Welch, Immigration Specialist

U.S. Department of Justice
Immigration and Naturalization Service

P. O. BOX 57040
DALLAS TX
75207

REF NO: 3RD PREF

DATE 07/21/88
TIME 15:16

**** RECEIPT NO: **SRC-88-318-0132** ****
THE ABOVE RECEIPT NUMBER MUST ACCOMPANY ALL INQUIRIES!

RECEIVED $ 35.00 IN THE FORM OF PERSONAL CHECK
FROM: NANCY D. HAWK

NEFICIARY: VERHONICA MARY LOVE
TITIONER: ISLAND IDEAS INC.
FORM: **I140**

PROCESSING YOUR FORM WILL REQUIRE
A MINIMUM OF 30 DAYS. IF YOU HAVE
NOT HEARD FROM US WITHIN 2 MONTHS
THEN YOU MAY CONTACT THIS OFFICE

ISLAND IDEAS INC
C/O NANCY D. HAWK
P.O. BOX 5?2
HARLESTON SC
29402

P 899 473 562

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL
(See Reverse)

Love
I-140

Sent to Immigration & Naturalization	
Street and No Southern Regional Service CEnte	
P.O., State and ZIP Code PO Box 57010	
Postage Dallas, TX 75207	$ 2.40
Certified Fee	85
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	90
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	$4.15
Postmark or Date	

PS Form 3800, June 1985

● **SENDER:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.
Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.
1. ☐ Show to whom delivered, date, and addressee's address. †*(Extra charge)*†
2. ☐ Restricted Delivery †*(Extra charge)*†

3. Article Addressed to:
Immigration & Naturalization
Southern Regional Service Center
PO Box 57010
Dallas, TX 75207

4. Article Number
P 899 473 562

Type of Service:
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature – Addressee
X

6. Signature – Agent
X V.A. White

7. Date of Delivery

8. Addressee's Address (ONLY if requested and fee paid)

DALLAS, TX STA. JUN 17 USPS

PS Form 3811, Mar. 1987 ★ U.S.G.P.O. 1987-178-268 **DOMESTIC RETURN RECEIPT**

NANCY D. HAWK
ATTORNEY AND COUNSELLOR AT LAW
145 KING STREET, SUITE [illegible]
P. O. BOX [illegible]
CHARLESTON, SOUTH CAROLINA 29402

June 13, 1988

Immigration & Naturalization Service
Southern Regional Service Center
P. O.Box 57010
Dallas, Texas 75207

Dear Sir or Madam:

We are here enclosing an I-140 Petition for Prospective Immigrant Employee. Island Ideas, Inc. is requesting third preference for Veronica Mary LOVE, A28 556 105.

Also attached is ETA 750 A&B with certification.

Also enclosed is a statement regarding the educational requirements and special abilities establishing that she is not only an artist of outstanding ability, but also establishing that she is a professional.

We are also enclosing our check in the amount of $35.00, as well as a copy of our G-28, original of which is in the file.

If you require any additional information or documentation,please contact this office.

Sincerely,

Nancy D.Hawk, Attorney at Law

Enclosure

LAW OFFICES OF
MICHAEL A. BANDER, P. A.

January 27, 1989

Regional Commissioner Stephen Martin
Immigration & Naturalization Service
P.O. Box 57010
Dallas, TX 75207

Dear Commissioner Martin:

The purpose of this letter is to provide you with a concrete example of the service that is currently being provided by the Southern Regional Service Center. Since you are responsible for this office, these matters need to be brought directly to your attention.

On November 4, 1988 our office filed by certified mail a Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status (Form I-751) with SRAC. Since we requested a return receipt, we have evidence that the Regional Service Center in Dallas received our form I-751 on November 8, 1988. However, as of this date the check remitting the required fee has not been cashed nor have we had any acknowledgement that the petition was received.

The case I refer to involves Hilda P. Von Arx-Jania, A number is 28 309 850. The Von Arx reside at 613 Ocean Drive, Apt. 8D, Key Biscayne, Florida 33149. The inability for the Service to process properly their application has caused them great inconvenience since they are fearful that they will be in violation of the law should they travel.

The problems at the Southern Regional Service Center in Dallas deserve your immediate attention. We here in Miami note with disappointment the inability of the Regional Service Center to provide the required service. The problem is particularly acute for those who reside in Miami since more than 50% of the applications received by the Regional Service Center originate in the Miami district.

The inordinate delays, the mishandling of cases such as this one, and the overall lack of response from Dallas over the years militates for a change. Your administrative officers do not seem to be able to handle the inability of the Dallas Service Center to provide appropriate service such as is being provided in St. Albans, Vermont. You may have the wrong people in place and perhaps those people in Dallas are not interested.

Of course the Region and RSC have known about these problem for years, otherwise Senator Hollings would not have placed in the Appropriations Bill the requirement for INS to give Congress a report by February 29 about the RSC.

The Miami district is one of the busiest in the country. It is acknowledged by all commentators that the Miami district is unique because of many different factors. INS has overlooked the Miami district, and has not provided sufficient manpower to it. INS has consistently overstaffed other areas and understaffed Miami which faces enormous problems in terms of immigration enforcement and service.

In summary, let's do something about Dallas and let's do it quickly. A good response would be to announce that a Regional Service Center office will be established here in Miami which would eliminate a lack of responsiveness from Dallas.

Sincerely yours,

Michael A. Bander

Michael A. Bander

U. S. Department of Justice
Immigration and Naturalization Service

Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status

OMB # 1115-0145

Do not write in this block

ID #	ACTION STAMP	FEE STAMP						
A #								
G-28 or VOLAG #								
Remarks		Receipt	Resubmitted	Relocated		Completed		
				Rec'd	Sent	Ret	App	Den

A. Information About Conditional Permanent Resident

1. Name (Family name in CAPS) (First) (Middle)
VON ARX-JANIA HILDA PHILLIS

2. Other names used (including maiden name)
Hilda Townley, Hilda Jania, Hilda Ashdown

3. INS A#
28 309 850

4. Telephone #
(305) 361-3635

5. Address (Number and Street)
613 Ocean Drive, Apt. 8D
(Town or City) (State/Country) (ZIP/Postal Code)
Key Biscayne, Florida 33149

6. Have you resided at any other address since becoming a permanent resident? (If yes, attach a list of all addresses and dates).

☐ Yes ☒ No

7. Date of Birth
October 15, 1917

8. Place of Birth
United Kingdom

9. Country of Citizenship
United Kingdom

10. Social Security #
592-34-2604

11. Current Employer (Name)
Not Employed

12. Employer's Address (Number and Street)
N/A
(Town or City) (State/Country) (ZIP/Postal Code)

13. Employer's Telephone #
N/A

14. Job Title
N/A

15. Supervisor's Name
N/A

16. Supervisor's Telephone #
N/A

17. Have you been employed anywhere else since becoming a conditional permanent resident? (If yes, attach a list including all information requested in items 9 through 14 for each.)

☐ Yes ☒ No

B. Information About Petitioning Spouse

1. Name (Family name in CAPS) (First) (Middle)
VON ARX JOSEPH A.

2. Other names used (including maiden name)
N/A

3. INS A#
N/A

4. Telephone #
(305) 361-3635

4. Address (Number and Street)
613 Ocean Drive, Apt. 8D
(Town or City) (State/Country) (ZIP/Postal Code)
Key Biscayne, Florida 33149

5. Have you resided at any other address since your spouse became a permanent resident? (If yes, attach a list of all addresses and dates)

☐ Yes ☒ No

6. Date of Birth
May 29, 1918

7. Place of Birth
Brooklyn, New York, USA

9. Country of Citizenship
USA

10. Social Security #
147-10-2511

11. Current Employer (Name)
Retired

12. Employer's Address (Number and Street)
N/A
(Town or City) (State/Country) (ZIP/Postal Code)

13. Employer's Telephone #
N/A

14. Job Title
N/A

15. Supervisor's Name
N/A

16. Supervisor's Telephone #
N/A

17. Have you been employed anywhere else since your spouse became a conditional permanent resident? (If yes, attach a list including all information requested in items 9 through 14 for each.)

☐ Yes ☒ No

Form I-751 (4/15/88)

P 333 376 053

RECEIPT FOR CERTIFIED MAIL

(See Reverse)

INS- Regional Service Center

Street and No.
POBox 568808

P.O., State and ZIP Code
Dallas, TX 75356-8806

Postage	$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	

Postmark or Date
11/4/88

PS Form 3800, June 1985 • U.S.G.P.O. 1985-480-794

● **SENDER:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☒ Show to whom delivered, date, and addressee's address. †(*Extra charge*)†
2. ☐ Restricted Delivery †(*Extra charge*)†

3. Article Addressed to:
Immigration & Naturalization
Service - Regional Service Center
P.O. Box 568808
Dallas, TX 75356-8806

33

4. Article Number
P333 376 053

Type of Service:
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature – Addressee
X

6. Signature – Agent
X D. Hartley

7. Date of Delivery
11/8

8. Addressee's Address (*ONLY if requested and fee paid*)

PS Form 3811, Mar. 1987 • U.S.G.P.O. 1987-178-268 DOMESTIC RETURN RECEIPT

In an attempt to get a handle on the processing delays in the Southern Regional Service Center, the Senate Report accompanying last year's appropriations bill requested a study be done of the Dallas office with a report to the finding and corrective actions taken submitted to the House and Senate Committees on Appropriations by February 28, 1989.

What is the status of this study? Could you highlight some of the corrective actions recommended in the report?

ANSWER: Work is still underway on the Southern Regional Service Center (RSC) study. Although it is premature to comment on any potential remedial actions outlined in the report, there are two initiatives that have been taken which are likely to provide some relief to the Southern RSC.

First, due to the establishment of the Immigration Examinations Fee account, new resources are being assigned to the Southern RSC. These included 48 positions that will be assigned to the Southern RSC, consisting of 31 officers and 17 clerks. Because many of the new officer recruits will need to attend the Immigration Officer Basic Training Course in Glynco, Georgia, it is likely that there will be a slight time lag until the beneficial impact of these additional resources is experienced.

Second, the Southern RSC is scheduled to have new automated systems hardware and software on-line before the end of FY 1989. The prototype of this FARES/CASE system, already in operation in Lincoln, Nebraska, is scheduled to be installed in the Eastern RSC shortly. Once installation and system testing is complete, the FARES/CASE system will be installed in the Southern RSC. While these two initiatives would be taking place despite any potential corrective action recommended in a review of the Southern RSC, they are likely to substantially benefit the efficiency and effectiveness of the Service's RSCs.

Employer Sanctions

QUESTION: In its annual report on employer sanctions GAO reported that employers may not understand the anti-discrimination provision of Immigration Reform and Control Act (IRCA) and therefore could be engaging in unfair employment practices. Accordingly, GAO recommended that a coordinated Federal effort to educate the public about IRCA was needed.

What specifically has INS done to educate employers about IRCA's Anti-Discrimination Provision? What actions has INS instituted to increase employer awareness?

ANSWER: INS has pursued a vigorous program to increase employer awareness of the anti-discrimination provisions of IRCA. These efforts continue to be an integral part of our overall educational and informational program, recognizing that compliance is essential to the success of employer sanctions. Anti-discrimination information is included in the "Handbook for Employers," INS Publication M-274. Over 10.7 million copies have been distributed to date. As part of the employer contact activities, INS agents use speeches, talks, and videotape presentations to educate employers about IRCA's anti-discrimination provisions.

INS has sent anti-discrimination materials to small businesses by using mailing lists from the Small Business Administration (SBA) and by providing materials for distribution directly to SBA's regional offices.

In addition, INS has prepared and distributed public service announcements dealing with the anti-discrimination provisions of the sanctions statutes. Available in both English and Spanish, the Public Service Announcements were distributed to radio and television stations in 36 major national markets to reach the largest possible audience of employers.

QUESTION: Has a coordinated effort been started with the Office of Special Counsel?

ANSWER: INS has established a coordinating effort with the Office of Special Counsel (OSC). This effort has included consultations with regard to the development of informational materials, the employer education campaign and the sanctions enforcement plans. The booklet entitled "Your Job and Your Rights" was jointly developed by INS and the OSC. The OSC has also been contacted regarding participation in seminars for employers. INS considers the coordinated activities with OSC an essential element of the overall employer sanctions effort and expects to continue them.

QUESTION: How much funding will be needed to increase employer awareness?

ANSWER: Increasing employer awareness of the anti-discrimination provisions of the sanctions statutes is an integral part of the larger on-going educational and informational effort. During 1989, implementation of the total campaign will require $1.6 million.

QUESTION: Are other agencies (such as Department of Labor and the Equal Employment Opportunity Commission) participating in educating employers?

ANSWER: Other agencies have been involved in the employer education effort. For example, 380,000 copies of the pamphlet entitled "Your Job and Your Rights" were provided to many organizations, including the Equal Employment Opportunity Commission (EEOC), the Department of Labor (DOL), the AFL-CIO, and various Hispanic rights groups for use in their employer education efforts.

The DOL, EEOC, and OSC representatives have been involved in INS Anti-Discrimination Working Group meetings and have made valuable suggestions about the development and planning of additional efforts in the educational and enforcement areas.

QUESTION: What specifically has INS done to educate employers about their responsibilities under the Act to hire authorized workers and comply with the I-9 requirements?

ANSWER: The effort to educate employers about their responsibilities under the employer sanctions statutes has been a large undertaking involving the development and delivery of critical information to millions of companies and individuals. Approximately 10.7 million copies of the "Employer Handbook" (M-274) have already been distributed to employers, major trade and labor organizations, colleges and universities, Federal, State and local government agencies, and public libraries.

INS agents have made over 1.7 million educational visits to businesses nationwide. These contacts have been a key element in the total effort since they allow employers to ask questions regarding their specific concerns.

INS sent special information packages to 12,000 colleges, universities and technical schools for use by campus newspapers, radio stations and guidance offices to inform students of the documents needed to apply for a job. Other large scale-mailings have been done to achieve the greatest possible dissemination of information to employers. For example, through a cooperative effort with the National Federation of Independent Businesses, sanctions information has been distributed to 300,000 small businesses which included a special message to agricultural employers.

In summary, INS has successfully developed and implemented a large-scale, multi-faceted educational and informational program. The program has led to a high level of voluntary compliance with the employer sanctions statutes.

QUESTION: According to GAO, INS conducted over 1 million educational visits from June 1987 to June 1988, and set a goal of 500,000 by June 1989. Will INS continue such visits after June 1989, and if so, at what level?

ANSWER: Educational visits will continue after June 1989. These visits are an integral part of the Service's comprehensive approach to employer sanctions. INS intends to make 750,000 additional visits between June 1989 and June 1990.

QUESTION: INS' policy is to fine employers for flagrant paperwork violations or when employers hire unauthorized workers. What is INS' policy towards employers who hire authorized workers but only prepare I-9s for foreign-

looking and/or foreign-sounding applicants? Will INS issue these employers paperwork fines for not completing all required I-9s?

ANSWER: Proper compliance with the verification requirements of the Immigration Reform and Control Act (IRCA) protects employers against discrimination. However, it is important to note that the verification requirement applies to hired individuals. The hypothetical situation presented in this question relates to applicants for whom no I-9 Form would be required. Employers who selectively complete I-9 Forms for hired individuals are subject to a fine for violations of Section 274A(b) of the IRCA. If the selectivity occurs during the employer's application process, it is possible that no 274A violation would result. Furthermore, INS officers are alert to such practices and would refer such an instance to the Office of Special Counsel for investigation of a potential violation of Section 274B.

INS policy permits issuance of a Notice of Intent to Fine if the paperwork violations are egregious or relate to substantive violations, or if the Service agrees to a paperwork fine pursuant to a plea agreement in which the employer admits in writing to the violation and agrees to future compliance. Determinations concerning the appropriateness of issuing "paperwork" fines are made at the discretion of local field office managers.

While there is no policy requiring issuance of a Notice of Intent to Fine to employers who appear to apply the verification requirements selectively, that condition is one of many that would be considered in determining if a fine or warning notice is appropriate.

QUESTION: INS recently announced it will develop a single employment authorization document for aliens. How much will this cost? When will INS begin issuing this document? Will INS replace all identification cards currently in circulation?

ANSWER: Since enactment of IRCA, INS has been working toward standardizing the employment authorization documents issued to authorized aliens. Those efforts are designed to facilitate the verification process for employers by reducing the number of documents with which they must be familiar. In addition, they ease the verification process for authorized aliens by providing them with an easily-recognized document establishing their eligibility to work.

In the summer of 1989, INS plans to begin issuing laminated employment authorization cards, which will resemble the I-688 and I-688A (cards developed for the legalization program) in appearance. This card, the I-688B, will be produced at approximately 200 sites, including ports of entry, district offices, sub-offices, and Border Patrol stations. The card will be issued to classes of authorized aliens not currently issued other cards by the Service who are authorized employment incident to status (enumerated at 8 CFR 274a.12(a)) or who must apply for employment authorization (8 CFR 274a.12(c)). The projected cost for the I-688B is approximately $2,930,000.

The I-688B provides an interim measure pending implementation of digital card issuance technology, which is scheduled for implementation in 1990. At that time, the Service will replace the interim card with a standard employment authorization card designated as the I-766.

When the I-688B system is implemented, INS will conduct a phased "sunsetting" of outstanding employment authorizations. Each I-688B will carry an expiration date. Over time, aliens whose employment authorization is renewed following expiration of the I-688B will receive the I-766 as a replacement.

QUESTION: How many potential cases of IRCA-related discrimination has INS referred to Office of Special Counsel?

ANSWER: INS recognizes its responsibility, in working with the Office of Special Counsel (OSC) and other agencies, to educate the public and prevent immigration-related discrimination caused by ignorance or misunderstanding of how employer sanctions work. By taking a positive, aggressive posture to ensure that acts of immigration-related employment discrimination do not occur, and promptly reporting deviations to the Office of Special Counsel, INS fulfills the intent of the reform laws by ensuring maximum job opportunities for all United States citizens and authorized alien workers. Neither INS nor OSC currently maintains statistical information reflecting the number of referrals made by INS officers. OSC received 276 charges of discrimination in 1988, and 105 charges in the first three months of 1989. A significant portion of these charges are referrals from the Service. In addition, a portion of the many public inquiries received by OSC are the result of the INS contacts.

QUESTION: The GAO transition report on Justice Issues states that the Attorney General must be in a position to tell Congress if the Act's objectives of reducing illegal alien employment and flow into the country have been met. What information is INS collecting and analyzing to determine if the Act's objectives are being achieved? When does the Administration feel sufficient time and experience with the employer sanctions provisions will have elapsed in order to fairly assess whether these provisions have reduced illegal alien employment and flow?

ANSWER: Throughout the implementation process, INS has recognized the need to assess the effectiveness of the sanctions program. In addition to refining the Service's enforcement strategies, such assessments enable us to meet our responsibility to recommend improvements to the legislative framework. Section 402 of IRCA requires the President to report to Congress annually for three years after the implementation of Section 274A. The information required to meet the external reporting mandates is also essential for conducting internal programmatic assessments.

During the first years of sanctions implementation, INS has worked to develop improvements to existing systems. To supplement those systems, the Service anticipates undertaking special data collection efforts as needed.

INS is making final determinations regarding data to be collected and the analytical methodology to be used. INS expects to implement the supplementary data collection efforts in May 1989.

The Service believes that the effectiveness of employer sanctions is already apparent, based on indications that many past employers of unauthorized aliens are changing their hiring practices as a result of the law. However, INS also notes that studies of similar laws in other nations suggest that the full impact of employer sanctions is often not realized until the law has been enforced for about five years. INS feels that at least five years will be required for a full assessment in view of the complexity of the analysis.

Border Patrol

QUESTION: The FY 1990 Budget request for INS includes an increase of $44 million, yet a $10 million cut in the Border Patrol Program. I am surprised at this proposal when last year the Border Patrol seized record amounts of illegal drugs -- including 60 percent of the marijuana and 40 percent of the cocaine confiscated on the southwest border.

According to the information provided me by the INS, I understand a hiring freeze was put into effect for the border patrol as of January 1, 1989. Current staff levels for the five sectors that make-up the Western Region average about 82 percent of the authorized level set by the 1986 Immigration Act. And Border Patrol officials on the Southwest border estimate that with attrition they will be at 75 percent of the authorized level within about six months.

The drug policy board regarded the Border Patrol as the lead agency for drug interdiction between the ports of entry along the 2,000 mile southwest border. Is this the current thinking at INS? If not, what role do you envision the Border Patrol playing along the southwest border?

ANSWER: The Border Patrol program will continue to have primary responsibility for drug interdiction between the ports of entry along the Southwest border. The FY 1990 President's budget request proposes a reduction of 552 authorized positions and $10.7 million in the Border Patrol program. This reduction will not effect the Patrol's basic mission of detecting and apprehending illegal alien entrants and the arrest of alien and narcotic smugglers along the southern border. The Patrol will also continue to conduct highly successful Operation Alliance mobile corridor interdiction operations utilizing existing Border Patrol resources in cooperation with other law enforcement agencies. The Border Patrol program will continue to use canines in the detection of drugs and persons being smuggled across the border within the concealment of vehicles and trains. The canine program has been extremely effective in the seizure of narcotics as well as its highly receptive involvement in the Drug Demand Reduction school programs conducted by the Patrol along the border.

QUESTION: While the FY 1990 budget requests a $10.7 million cut in the Border Patrol, I have heard talk of a projected deficit in the program during this current fiscal year.

Are you considering requesting a reprogramming of resources into this decision unit during 1989?

ANSWER: INS is developing a reprogramming of resources into the Border Patrol decision unit during FY 1989. Although this program received over $18 million of the $26.2 million received by INS in the Anti-Drug Abuse Act of 1988, it will still be necessary to reprogram additional resources into this program in 1989. At present, it appears that an additional funds will be necessary to fund the high levels of on-board staff, as well as to conform to the intent of Congress as expressed in the enhanced enforcement provisions of IRCA.

QUESTION: A serious safety concern I have with the Border Patrol is the lack of voice privacy capability for officers in the field when communicating with one another. There have been several cases where Border Patrol officers have come across traffickers who are equipped with police scanners so they could monitor Border Patrol radio transmissions.

Have you selected a voice privacy radio system for border patrol and can you provide me with a time frame on when all the officers in the field will be able to communicate in secure voice?

ANSWER: A voice privacy system has not yet been selected. However, INS plans to be fully compatible with other drug enforcement agencies. INS plans to implement a low level voice privacy capability within the next three years and gradually replace the radio infrastructure with a high level voice communications capability over the next 5 to 10 years.

Soviet Jewish Refugees

QUESTION: We have a resolution from the New York Association for New Americans, Inc. regarding Soviet Jewish Refugees which says that more than 200 Soviet Jews have been denied refugee status by the Immigration and Naturalization Service. In addition, we have a letter from Exodus World Service regarding the Soviet Refugees. What effort is the Department making to raise the authorized level of refugee admissions in order to take advantage of the greater opportunity of Jews as well as Pentecostals to emigrate from Russia?

ANSWER: The Refugee Act of 1980 provides for emergency consultations with Congress to raise the Presidential Determination of refugee ceilings. The United States Coordinator for Refugee Affairs generally is responsible for initiating a request for increased admissions numbers.

Insufficient numbers may be handled in three ways, all of which are being actively examined:

1. requesting an increase in the authorized level from Congress and the President, with an accompanying allocation of funds, or

2. spending the current fiscal year's funds early in the year to "front load" the system, giving the illusion of continued movement but bringing the program to a halt mid-year when the funding is gone, or

3. expending funds equitably each month, which allows continued movement (albeit at slower speeds) but causes case backlogs to develop.

In December 1988, the Attorney General exercised his parole authority to permit the entry of Soviet emigres into the United States. On April 5, 1989, the Attorney General announced that draft legislation, entitled the Special Immigrant Protection Act of 1989, had been submitted for introduction in Congress. Under this legislation that was coordinated with the Department of State, the President could authorize the issuance of up to 30,000 "special" immigrant visas annually for the five-year duration of the legislation. While this legislation is intended to address the recent influx of emigrants from the Soviet Union who are being denied refugee status in Moscow and here, it is non-nation specific.

Proposed H-1 Visa Rulemaking

QUESTION: An alien who is permitted entry into the United States with an H-1 visa could be a person of distinguished merit and ability who has earned national or international

acclaim (i.e., scientist, doctor, sports figure, artist, writer, or entertainer). The petition for such a visa could be filed by a United States or foreign employer. The Department of Justice Appropriation Act of 1989, in part, states that none of the funds appropriated or made available by this act should be used to issue or implement a fiscal rule concerning H-1 visas. On October 26, 1988, the Service published the new proposed H-1 rule. What is the difference between the existing and proposed H-1 rules? How does the proposed rule satisfy congressional concerns?

ANSWER: Attached is a side by side comparison of the August 8, 1986 proposed rule and the new October 26, 1988 rule (Attachment 1). Provisions in the new proposed rule are substantially different from the previous rule. To the extent that we can under current law and Service policy, we accommodated the concerns of the AFL-CIO. In addition to the AFL-CIO, the Service tried to accommodate the concerns of other interest groups in the new proposed rule, such as the motion picture industry, certain folk art groups, and businesses. Provisions such as standard criteria for qualifying as a professional, two new H-1 categories for high-level business persons and unique artists, and expansion of the accompanying alien provision are essential to facilitating the admission of H-1 workers needed by business and industry.

Several Congressional Committees were concerned that the proposed regulations may expand the number of H-1 workers admitted to this country and result in displacement of American workers or depression of wages and working conditions in certain occupations and industries. Congress requested that the Service determine the occupational backgrounds of H-1 workers, the impact of H-1 workers on the American work force, wages and working conditions of H-1 workers, and the impact of proposed regulations on admission of H-1 workers in industries now utilizing such workers. The Service contracted with a well-known consulting firm, Booz, Allen and Hamilton, Inc., to conduct a study on the impact of H-1 workers on the labor market. Overall, the study found that H-1 workers admitted to the United States do not have an adverse impact on the labor market in terms of displacement of United States workers or depression of wages and working conditions. The Service concurred with the findings in the study and submitted copies of the study report to Congress on July 15, 1988.

Since there is significant evidence that H-1 workers are not having an adverse impact on the American labor market, and the proposed expansion of the H-1 category to include business persons who have exceptional career achievement and unique and traditional artists would have negligible impact, the Service believes that the new proposed rule satisfies Congressional concerns. The rule would continue to include entry to mid-level professionals under the H-1 category; to do otherwise under current law would undoubtedly create adverse economic consequences for American businesses, hospitals, universities, and other institutions.

QUESTION: What were the specific differences of opinion between INS, the entertainment industry and the AFL-CIO regarding the existing rule? Have these differences been rectified under the new proposed rule, and if so, how?

ANSWER: Attached are the specific differences of opinion expressed by the entertainment industry (businesses) and the AFL-CIO regarding provisions of the August 8, 1986 proposed rule (Attachments 2 and 3). Below each concern is a statement of how the Service responded in the new proposed rule.

QUESTION: Summarize the public comments to date concerning the 1988 proposed rule especially as they relate to the entertainment industry and the concerns of the AFL-CIO.

ANSWER: The 36 timely commenters on the October 26, 1988 proposed rule continued to be concerned that the standards for professionals and the standards for prominence under the H-1 classification are too restrictive. The 42 late commenters were concerned about the same issues. The AFL-CIO reaffirmed its comments from the August 8, 1986 rule. The AFL-CIO also submitted an analysis of the Booz Allen study which, in their view, indicated that it is deeply flawed and unworthy of reliance. Attached is a summary of the significant issues raised by the various commenters (Attachment 4). Also attached is a copy of the response of Booz Allen to the AFL-CIO's analysis of the H-1 study (Attachment 5).

Comparison of Proposed Rules for the H Classification

Proposed Rule of August 8, 1986	New Proposed Rule
Filing Requirements	
(A) The petition would be filed with the Service office where the petitioner is located when the services will be performed in more than one location.	(A) Same
(B) An H petition could be filed by a U.S. or foreign employer.	(B) An H-1 petition could be filed by a U.S. or foreign employer. An H-2 or H-3 petition must be filed by a U.S. employer or the authorized U.S. representative (with hiring authority) of a foreign employer.
(C) An amended petition would be filed with the Service to reflect any changes in the terms and conditions of employment.	(C) An amended petition would be filed to reflect material changes in the terms and conditions of employment.
(D) An established agent could file a petition as the employer but must guarantee the terms of employment by contractual agreement with the beneficiary(ies) and specify the booked engagements for the period of time requested.	(D) An established agent could file the petition as the representative of multiple employers and the beneficiary(ies) with a complete itinerary of engagements. When the agent is the actual employer, a contract between the agent and beneficiary(ies) would be required.
(E) Multiple H-1 beneficiaries on one petition would be restricted to professional sports teams, performing ensembles, and accompanying aliens.	(E) Multiple H-1 beneficiaries may be included on one petition if they are members of a group seeking classification based on the reputation of the group or if they are accompanying aliens.

ATTACHMENT I

(F) H-2 petitions with unnamed beneficiaries would be limited to those involving seasonal agricultural or logging work and those involving more than 25 construction workers.	(F) Every H petition would have to include the names of beneficiaries.
(G) Substitution of beneficiaries could be made only in petitions involving unnamed beneficiaries, H-1 sports teams, and performing ensembles.	(G) Substitution of beneficiaries could be made only in H-1 and H-2B petitions involving a group where the qualifications of individual beneficiaries were not considered in according H classification.
(H) District Offices could adjudicate petitions in the entertainment industry in emergent cases.	(H) All petitions in the arts, cultural, and entertainment fields would have to be adjudicated at a Regional Service Center. District Offices would have no authority to adjudicate such petitions.

H-1 Aliens of Distinguished Merit and Ability

(A) An alien of distinguished merit and ability is one who is a member of the professions or one who is preeminent in his or her field.	(A) Same, except that the term "preeminent" would be changed to "prominent" to clarify that H-1 includes persons who are leading or well-known, in addition to those who are superior or of the highest rank in a field.
(B) A "profession" would require completion of a specific course of education at an accredited college or university, culminating in a baccalaureate or higher degree in a specific professional field, and attainment of such degree or its equivalent is the minimum requirement for entry into the profession in the United States. There are two	(B) Same, except that the requirements for professionals who lack the required degree would be modified. Such professionals would have to have a combination of two years of college-level education appropriate to the profession, three years of specialized training and/or professional experience in lieu of

categories of persons who do not meet these requirements but would be nevertheless regarded as professionals. The first category is persons who, after passage of normal professional tests and requirements, are granted full state licenses to practice the profession. The second category is persons who lack the required degree but, by virtue of a combination of at least two years of college-level training in the profession, five years of professional experience, and evidence of professional achievements and recognition are regarded as professionals.	each year of college needed to complete the degree, and evidence of professional standing.
(C) An alien is considered "prominent" if he or she has national or international renown and acclaim in the field of endeavor. The rule proposed to add two new categories of prominence to include business persons who have exceptional career achievement and unique performing artists.	(C) Same, except that the category for unique performing artists would be expanded to include nonperforming and performing artists who represent a unique or traditional ethnic, folk, cultural, musical, theatrical, or other artistic art form.
(1) The rule incorporated from current regulations, the forms of documentation required for entertainers to establish that they have national or international acclaim and recognition, but did not propose documentation requirements for persons in other occupational fields.	(1) This rule would eliminate special documentation for entertainers and specify the types of documentation required to establish that an alien has national or international acclaim and recognition in any occupational field. Three forms of documentation from the diversified listing would be required to establish eligibility for H-1 classification.

(2) Persons who cannot qualify as professionals would, if they have achieved positions of responsibility and significance in business, qualify as prominent. This new standard under the prominence category would rectify the situation whereby certain aliens with substantial amounts of work experience and significant achievements in business are employed in high-level positions requiring a broad range of responsibilities but have not been able to qualify for H-1 classification. To qualify as prominent, the alien would be required to have exceptional career achievement in business in executive, managerial, or highly technical positions evidenced by at least three factors, such as managerial responsibility for at least 500 employees, 15 years of experience, salary in excess of $100,000 per year, and contributions of significance to the business industry.	(2) Same, except that the documentation requirements would be made less restrictive, such as reducing management responsibility for 500 employees to 100, 15 years of experience to 10 years of experience, and salary in excess of $100,000 to salary in excess of $75,000.
(3) The new H-1 category for entertainers would be restricted to performing artists who would be coming to the U.S. for 60 days or less in a year only for a cultural event and would be sponsored by a nonprofit educational, cultural, or governmental organization.	(3) The new category would be expanded to include unique or traditional performing and nonperforming artists coming primarily to the U.S. for educational or cultural events and sponsored primarily by an educational, cultural or governmental organization. The documentation required to establish eligibility would be specified clarifying that the documentation for this category is different than that required for national or international acclaim and recognition.

(D) An accompanying alien would be a highly-skilled essential support person determined to be necessary for the successful performance of an H-1 individual, sports team, or ensemble performing before an audience.

(D) This rule would limit accompanying alien status to the arts, cultural, entertainment, and professional sports fields but includes essential support staff to other than performing artists and professional sports teams if certain conditions are met. Essential support staff would derive H-1 classification from the H-1 alien or group in the above fields to whom his or her skills are essential if:

(1) the alien is coming to the United States to perform support services which cannot be readily performed by a U.S. worker,

(2) the alien's services are essential to the successful performance of services to be rendered by the H-1 alien or group, and

(3) the alien possesses appropriate qualifications, significant prior experience with the H-1 alien or group, and critical knowledge of the specific type of services to be performed so as to render success of the services dependent upon his or her participation.

(E) When there is doubt about an alien's eligibility for H-1 classification in the entertainment industry, the Service would request an advisory opinion from unions, other organizations, or recognized critics or experts in the field.	(E) The rule would provide for a balanced advisory system. Whenever an opinion is sought from a labor union, a management organization must be consulted also. An opinion could be sought from a recognized critic or expert in lieu of consulting with a labor and a management organization.
Special Considerntion for Certain Employers of Professionals and Prominent Persons	
(A) Not Addressed	A) In cases where the petitioner has a significant record with the Service of consistently obtaining H-1 classification for professionals and prominent business persons, the petitioner would be relieved of the burden of providing actual evidence of the alien's qualifications. The Service would accept the petitioner's word.
(B) Not Addressed	(B)' Where the petitioner has a significant record of not obtaining H-1 classification, extensive supporting evidence would be required.

H-2B Classification for Temporary Nonagricultural Workers	
(A) The test for determining "temporary services or labor" would be whether the need of the employer for the duties to be performed is temporary. The nature of the need, not the nature of the duties, is controlling.	(A) Temporary services or labor would mean any job where the petitioner's need for the duties to be performed is temporary. The period of the petitioner's need would have to be one year or less except in extraordinary circumstances. The temporary need would have to be seasonal, peakload, intermittent, or a one-time occurrence. The regulations would define these terms.
(B) A U.S. or foreign petitioner would have to obtain a labor certification or notice that certification cannot be made from the Secretary of Labor or the Governor of Guam, as appropriate, before filing an H-2B petition with the Service.	(B) For H-2B classification, the petitioner would have to be a United States employer or the authorized U.S. representative of a foreign employer which would have to have a location in the United States, consider U.S. workers for the temporary services, and offer wages and working conditions consistent with the nature of the occupation, activity, and industry in the United States. The petitioner would not be able to file an H-2B petition unless it had applied for the labor certification within the time limits prescribed or accepted by the Secretary of Labor or the Governor of Guam.

H-3 Classification for Trainees

(A) The maximum period of a training program would be limited to 18 months.	(A) The maximum period of a training program would be limited to two years.
(B) The conditions under which a training program could be approved were prescribed and a number of restrictions on approval of a training program were proposed.	(B) Same

Other Technical Amendments

(A) An application for extension of stay would require only the filing of an application for extension by the beneficiary, accompanied by a letter (or labor certification in H-2 cases) from the employer restating the terms and conditions of employment. No action would be taken on the visa petition if the beneficiary's application for extension of stay is denied. Approval of the beneficiary's application for extension of stay would automatically extend the visa petition for the same period.	(A) Same
(B) After an H-2 beneficiary has spent three years in the United States and an H-3 beneficiary has spent 18 months in the United States, a new petition for the alien in the same classification would not be approved unless the alien departed voluntarily and resided outside the United States for six months.	(B) Same, except that 18 months would be changed to two years for H-3 beneficiaries.

(C) The approval of a permanent labor certification or the filing of a preference petition for an H-2 or H-3 alien beneficiary in the same or a different job or training position by the same employer would be a ground to deny a new H petition or the alien's application for an extension of stay.	(C) Same

ATTACHMENT 2

Businesses in the Entertainment Industry

Concerns of businesses in the entertainment industry related mainly to accompanying alien status, consultation with unions, the new H-1 category for nonmainstream performers, H-1 documentation standards for performers, the impact of H-1 standards on folk artists, agents as petitioners, consideration of a prior H-1 approval on a subsequent petition. The specific concerns and how they were addressed in the new proposed rule are:

- Documentation required to establish prominence relates to performers and fails to address petitions for other members of the entertainment industry.

- Documentation standards for H-1 entertainers are too restrictive and, in some cases, inappropriate.

    - Documentation relates to performing artists and fails to address petitions for other members of the entertainment industry.

    - Standards are inappropriate for nonmainstream artists, such as traditional, classical, jazz, and ethnic artists.

    - There is no guidance on the amount and combination of evidence required to establish prominence.

    - Prominence standards eliminate an opportunity for aspiring and developing artists to establish a presence in the U.S. market.

    The Service agrees that the H-1 documentation standards for entertainers, for the most part, apply to performing artists and concluded that the regulations should specify the types of evidence required to establish prominence in any field, including entertainment. The new rule was modified to specify types of evidence that are appropriate in any field. This more diversified listing of documentation applies to any occupational field, deemphasizes commercial success, and provides guidance on how many forms of evidence are required to establish eligibility.

    Under the statute, every foreign artist cannot be accorded H-1 classification. Only those who have national or international renown because of their achievements in particular field or those who have exceptional skills in a unique or traditional art as recognized by experts or authorities in the field are eligible. Others will have to seek H-2B classification which requires a labor certification or notice that certification cannot be made from the Department of Labor.

- Definition of accompanying alien will eliminate members of teams for motion picture and television productions.

    Accompanying aliens derive H-1 classification from a principal H-1 beneficiary in the entertainment industry because they have been determined to be essential to the successful performance of services by the principal due to their unique qualities and experience with the principal. All other support personnel must seek individual classification based on their own merits. The Service has determined that accompanying alien status can be expanded in the arts, cultural, entertainment, and professional sports fields to include essential support staff to other H-1 beneficiaries besides performing artists if certain conditions are met. Derivative H-1 classification will not be extended to aliens in other fields and industries. Essential support staff may derive H-1 classification from the H-1 alien or group in the above fields to whom his or her skills are essential if:

(1) the alien is coming to the United States to perform support services which cannot be readily performed by a U.S. worker,

(2) the alien's services are essential to the successful performance of services to be rendered by the H-1 alien or group, and

(3) the alien possesses appropriate qualifications, significant prior experience with the H-1 alien or group, and critical knowledge of the specific type of services to be performed so as to render success of the services dependent upon his or her participation.

o Motion picture companies and opera service organizations objected to the provision that district directors "shall" consult with unions in doubtful cases, even though other organizations and experts were specified along with unions.

> This rule will establish a system for seeking a balance of views in doubtful cases. The regulations have been modified to also require consultation with a management organization whenever an opinion is sought from a labor organization. The director has the discretion to consult with critics or other experts instead of a labor and management organization.

o Numerous commenters commended the Service for expanding the H-1 category to include unique artists who do not have the recognition of mainstream artists, but felt certain requirements in the provision are too restrictive.

> The new rule eliminated certain restrictions on the new H-1 category for unique or traditional artists by expanding the category to include other artists who are not performers, eliminating the 60-day time period, and deleting the requirement for sponsorship by a nonprofit organization. This category excludes artists who are coming to the United States primarily to provide commercial entertainment. To establish eligibility for H-1 classification under this category, an artist or group must provide affidavits, testimonials, or letters from recognized authorities which attest to the excellence of the artist's or group's skills in performing or presenting the unique or traditional art and the significance of the recognition accorded the artist or group.

o H-1 criteria for prominence will prevent folk artists from touring the U.S. and deny people of this country the experience of sharing cultures form around the world.

> Although the Service is sensitive to the unique circumstances of the arts, cultural, and entertainment industry, the need to promote cultural exchange, and the desire of the public for exposure to other cultures and a variety of entertainment, the Service is bound by the statutory requirements of the Immigration and Nationality Act in administering the H classification. Our regulations, case law, and other policy must conform to Congressional intent. Congress did not build into the H classification the flexibility for the Service to consider such factors as cultural exchange, reciprocity, freedom of artistic expression, personal preferences, or economic hardship to the petitioner in according H classification. Nor is there a mechanism for applying lesser standards for classification to the arts, cultural, and entertainment industry than to any other industry. As provided in the Act, aliens who do not qualify for H-1 classification may be admitted to the United States as temporary workers where there is a shortage of employable workers in that occupation as certified by the Secretary of Labor.

o The fact that a foreign entertainer has been accorded H-1 visa status on a prior occasion represents an offical adjudication by the Service and the finding that the individual is of "distinguished merit and ability." The denial of H-1 visa status on a subsequent petition, assuming other factors remain the same, would not only be unreasonable but a clear violation of the Administrative Procedure Act's prohibition against arbitrary and capricious decisions.

The Service is not bound by a prior determination and may even readjudicate eligibility in an already approved petition under certain circumstances, such as when the original determination involved gross error. Denial of a subsequent petition, even when the facts are the same as those on a previously approved petition, is not a violation of the Administrative Procedures Act's prohibition against arbitrary and capricious decisions. The Service is not required to approve petitions merely on the basis of prior approvals which may have been in error. The burden is on the petitioner and the beneficiary to establish eligibility for the classification in each petition.

ATTACHMENT 3

Issues of Concern to the AFL-CIO and Affiliated Unions

1. Six labor organizations objected to members of the professions being considerd aliens of distinguished merit and ability. The labor organizations also contended that recently graduated engineers, computer programmers, teahcers who have just received a teacher's certificate, and nurses who have just passed a State board examination are persons of distinguished merit and ability is patently absurd and contrary to the plain meeting of the statutory language.

Response

The Service's interpretation that members of a profession are aliens of distinguished merit and ability has a questionable but long-standing basis. However, the fact that the Service has equated membership in and performance of services in a profession to H-1 classification for the past 14 years without Congressional disapproval has significance. A retreat from the present interpretation would undoubtedly create adverse consequences for American businesses, universities, hospitals, and other institutions. These employers regard the H-1 classification as a fairly critical and rapid means of obtaining professional workers needed by them to remain competitive in today's international ecomony and rapidly changing labor market. The Service has no evidence of widespread abuse of H-1 classification by employers and alien members of the professions and feels compelled to continue the present interpretation of distinguished merit and ability. The Service believes that a Congressional amendment to the statute would be required to retreat from this interpretation after such a long time. Therefore, the new role continues to include entry and mid-level professionals under the H-1 classification.

2. Several unions felt that including "the arts" in the list of recognized professions would muddy what was previously a clearly defined concept, and that there is no clear-cut definition of what constitutes a profession in the arts.

Response

The Services does not believe that the inclusion of the "arts" in the definition of a profession in any way makes the concept of a profession unclear. All colleges and universities confer degrees in the arts, such as music and drama, and the attainment of such a degree is required for entry into certain occupations in artistic, cultural, and entertainment fields. The definition continues to include the arts as a recognized professional field.

3. The Service had defined "preeminence" as exceptional ability in a field evidence by a degree of skill and/or recognition sustantially above that ordinarily encountered. Four labor organizations objected to the and/or construction in the definition of preeminence. They felt that the "and/or"

contruction would allow either skill or recognition above that ordinarily encountered to be evidence of exceptional ability in a field. They stated that this differs from the authoritative language of House Report 91-851 and pointed out that the report language incorporates the concepts of "prominence" and "high level of education in a field of endeavor," both of which were omitted in the definition of "preeminence."

Response

The new proposed rule changed the term "preeminence" to "prominence". The Service also agreed with the unions that the term "prominence" requires skill and recognition in order to conform to the statutory standard of distinguished merit and ability. The definition in the rule reflects this change. We disagree, however, that the definition of "prominence" must include a high level of education in the field of endeavor. This is a concept which applies to members of the professions. Distinguished merit and ability can be established by documenting that the alien is a member of the professions or by documenting that the alien is prominent in his or her field of endeavor.

4. The AFL-CIO felt that the term "sustained" national or international acclaim as a standard for prominence was ambiguous. It could be taken to mean "received" which could be a one-time, short-term occurrence, or "continued" meaning lasting or prolonged. The commenter believed that the latter meaning was intended and that this standard should be clarified to reflect that intent.

Response

The Service used the word "sustained" to describe the type of national or international acclaim and recognition required for H-1 classification. The word makes it clear that persons with ephemeral or short-lived acclaim and recognition in their field, especially in a field such as entertianment, are not eligible for H-1 classification. The new rule retains the word "sustained" since it accurately describes the nature of the acclaim and recognition required to qualify under the prominence standard.

5. Several unions stated that the Service has no authority to include the new H-1 provision for unique or traditional artists under the H-1 classification without a Congressional amendment to the statute.

Response

The new rule also includes the new H-1 category for certain artists who are prominent in a narrowly recognized art, cultural, or entertainment field to accommodate artistic performances and presentations which by their nature cannot receive the widespread acclaim and recognition in what might be termed the mainstream arts. We believe that Congress intended the Service to make administrative interpretations of the statute as long as they conform to the statutory standards for the particular classification.

6. The AFL-CIO believes that the proposal to consult with other organizations, critics, or experts along with unions on the qualifications of prominent aliens and the caliber of services they will perform undermines the purpose of this procedure.

Response

Previous regulations have provided that the district director may consult unions, other organizations, recognized critics, and other experts in the relating entertainment field when in doubt about an H-1 petition for an entertainer. Service Operations Instructions have specified that the views of experts shall be sought in such cases. It has been and continues to be the Service's policy that the views of experts must be sought in doubtful cases before a director approves the petition.

In actual practice, advisory opinions are usually sought from labor organizations for the entertainment industry. This is because these organizations over the years have volunteered to provide advisory opinions free of charge to the

Service. This rule will establish a system for seeking a balance of views in doubtful cases. The regulations have been modified in the new rule to also require consultation with a mangement organization whenever an opinion is sought from a labor organization. The director will have the discretion to consult with critics or other experts instead of a labor and a management organization.

7. The AFL-CIO was pleased with the restriction of accompanying alien status to essential support staff to performing artists. However, they objected to district directors being the ultimate judge of who is an accompanying alien and a later proposal which would broaden the accompanying alien provisions to include essential persons to any H-1 alien or group in the arts, cultural, entertainment, or professional sports field if:

- **the alien regularly works and travels with the H-1 individual or group as support personnel for the specific type of service to be preformed, or**
- **the H-1 individual or group over the past two years has a significant record of working with or using the services of the alien to perform the type of services required and there are compelling reasons to use the support services of the alien in lieu of those of a U.S. worker, or**
- **the services to be performed by the H-1 alien or group are a continuation of services initiated and performed primarily in a foreign country and it is necessary for the successful completion of services in the U.S. to maintain the continuity of support personnel.**

Response

The Service conceded that the above language may be too broad and accepted certain recommendations of the AFL-CIO for changes in language. The new rule provides for accompanying alien status for essential support staff of H-1 aliens and groups in the arts, cultural, entertainment and professional sports fields if:

- the alien is coming to the United States to perform support services which cannot be readily performed by a U.S. worker,
- the alien's services are essential to the successful performance of services to be rendered by the H-1 alien or group, and
- the alien possesses appropriate qualifications, significant prior experience with the H-1 alien or group, and critical knowledge of the specific type of services to be performed so as to render success of the services dependent upon his or her participation.

The Service will remain the ultimate judge of which aliens qualify for accompanying aliens status. The Service director has the discretion to consult with recognized experts in the field if an advisory opinion is needed. The Service agreed with the unions that the notations "H-1 Accompanying Alien" or "Member of H-1 Group" as appropriate should appear on the alien's visa and arrival and departure document.

8. An agent should not be a petitioner since an agent cannot guarantee the performance of the artist nor can the agent guarantee payment to the artist by the promoter.

Response

The proposal to allow agents to petition for H classification on behalf of the actual employer and the beneficiary codifies into regulation a long-standing practice. In occupations where workers are traditionally self-employed and use agents to arrange short-term employment on their behalf with numerous employees, such as entertainers and models, the Service has allowed the agent to file as the petitioner. This allows for more efficient coordination of engagements and reduces paperwork for the Service. Whenever the beneficiary(ies) will be employed by a single employer or when the beneficiaries are not using the services of an established agent, the actual employer(s) must file the petition.

9. Rule lacks mechanism through which U.S. workers and their representatives can determine which and how many nonimmigrant aliens get H-1 visas and whether they are being authorized in compliance with statutory requirements.

Response

The Service is not obligated to consult with or notify the appropriate labor organization on every H-1 petition. Congress did not provide for consideration of the availability of U.S. workers under the H-1 classification, nor was there any implication that Congress intended labor organizations to have an official role in the adjudication of H-1 petitions. However, the Service appreciates the advice which they provide and is sensitive to their efforts to protect job opportunities for U.S. workers. The Service is continuing to look at better ways to compile and disseminate meaningful data on the nonimmigrant classifications to the public and to Congress. The proposed rule, however, is not intended to address issues relating to collection and dissemination of statistical data.

ATTACHMENT 4

ANALYSIS OF TIMELY H COMMENTS

(1) Karen A. Deseve, Attorney

There are many foreign nurses who have a permanent license to practice professional nursing in a state, but who have never taken the CGFNS examination. These nurses would have difficulty obtaining employment in another state. Most states will recognize licenses from other states on the basis of reciprocity. These states will issue a temporary license until the processing of the permanent license is completed. It may take several weeks or even months for the permanent license to be processed. Having to wait to file an H-1 petition until a new permanent license is processed creates an undue burden on the petitioning hospital.

It should be required that the beneficiary either have a permanent license in any state or a full and unrestricted license (permanent or temporary) in the state of intended employment.

(2) Great-West Life Assurance Company
Marguerite Trossevin, Counsel

We commend the Service's efforts to clarify the H visa regulations and address the concerns of the business community, particularly with respect to qualifications of a professional.

If college-level training is interpreted to include only training at academic institutions, then recognized professionals who have obtained all of the required specialized knowledge through alternatives to academic training (e.g., in-house training and industry courses) would be unjustifiably precluded from H-1 status.

Some professionals obtain their training through nonacademic programs, which are perhaps more common outside the U.S. Creating a strict requirement that at least two years of training be obtained at an academic institution defeats this purpose. This provision should be amended to reflect the fact that professional training can be obtained entirely outside academic institutions.

Professionals who obtain their training outside academic institutions should not be held to a higher standard of proof than those who have academic training. Professionals who have been trained at an academic institution are not required to provide further evidence of their professional standing with documentation, such as expert opinions or membership in a professional association.

An evaluation of a person's training and experience by a credentials evaluation service can, like a degree, confirm that he or she has attained the requisite level of knowledge for a profession. We recommend a modification to ensure that a credentials evaluation that demonstrates that a person's professional training and experience is equivalent to the required degree is sufficient evidence of professional standing.

(3) Theodore P. Jakaboski, Attorney

I concur entirely with Interpreter Releases comments.

Tightening the H-1 regulations will tend to prevent the United States from holding onto, at least temporarily, some of the best minds in the modern world.

You ought to devote your attention much better to education or hiring examiners who can read a balance sheet, understand something about stock ownership, are up on modern technology, so the best of the H-1 applicants can have their applications reviewed by people with a fighting chance of understanding what they are reviewing.

(4) Gerald H. Robinson, Attorney

The H-1 rules constitute a serious inhibition on the ability of American business, especially small business, to recruit and hire urgently needed temporary workers.

The regulations include a basic fallacy that ability and achievements can be quantified.

The regulations include undefined usages subject to the interpretation of examiners, such as renown, recent, sustained national or international acclaim, significant national or international awards or prizes, and significant recognition.

The timing of the regulations puts the good faith of INS in question because it comes when the Congress is in recess, in apparent defiance of a Congressional directive to withhold publication of new H-1 regulations, and immediately before a presidential election.

H-1s are not a problem. The adjudicatroy difficulties and the litigation referred to in the explanation to the rule, were self-imposed by the INS when it began to restrict H-1s by a series of case-by-case rulings. Not until Portugues did INS profess to have difficulty adjudicating H-1 petitions. Rather than removing its self-imposed burden, the INS now seeks to compound its evil effects by proposing even more rigid regulations. INS should overrule Portugues and revert to the decades of precedent decisions that enabled examiners to take a common-sense view of H-1 petitions, especially where the combination of education and training is claimed to be equivalent to a college degree.

The rule is primarily aimed at small entities and seeks to deprive them from using the H-1 category to meet their personnel needs, especially for technical, scientific, managerial and executive staff. In the lase eight years, INS has exhibited a significant bias against small enterprises in several ways.

Small entities are indeed adversely affected because they are more likely than their large counterparts to file petitions for aliens in the professions or business who lack the extensive, formal credentials contemplated by the regulations. Small business is unlikely to find or afford aliens who have supervised the large business components contemplated by the regulations, or enjoyed salaries of $75,000 or more.

There are far more small than large enterprises. Most jobs created in the U.S. are provided by small business. If INS has a genuine concern about American workers and the protection of their jobs, it would tryto alleviate, rather than compound, the disabilities of small firms.

It is suggested that when multiple employers are part of the same firm, such as subsidiaries, affiliates, or divisions, a single petition detailing the work or training assignments should be sufficient to assure compliance with H-1 rules.

Paragraph (h)(3) contains no provisions for consultation by INS for individual or business petitions, although it may do so if the aliens are in the arts, cultural or entertainment fields.

The statute contains no distinction between professsionals and others as far as prominence or renown is concerned. All that is required is that the alien be of distinguished merit and ability - a standard that appears on its face to be independent of fame or renown. All that the statute seemsw to require is evidence of distinction and ability - fame is irrelevant.

The broad range of occupations and the variety of human experience make a mockery of any attempt to create a formula to quantify life and equate it to university credit, except on a case-by-case basis.

The rules would totally eliminate from consideration as professional anyone without two years of formal college training. INS has apparently overlooked the fact that new specialties are being developed continuously, and university courses tend to follow their emergence, not precede them. Why should proactitioners of new technologies be, in effect, excluded from the H-1 category?

Paragraph (h)(3)(i)(C)(4)(ii) requires that an alien's qualifying experience be "recent" and subsequent to the college training. Does INS really believe that knowledge cannot be H-1 qualifying if it is gained by a temporal intermixture of work and study?

Paragraph (h)(3)(i)(B)(5) defines "recognized authority" as one who is an expert and who is also "acknowledged by the Service as an acceptable source of information". Does this imply that even if a person is an expert, INS is free to disregard his or her evidence?

Another example of INS' bias toward large business is the lowering of evidentiary requirements for firms that have a record of many approvals. Obviously only large firms are likely to have such a record. This section violates the constitutional requirements of due process of law and imposes an irrational and arbitrary burden on small business not hired by large firms.

The rule would enable INS to seek out on its own motion advice from relevant managements and unions. While this is no in principle objectionable, its implementation is. All advisory opinions should be in writing and promptly furnished to the petitioner for investigation and/or rebuttal.

By requiring that aliens in the arts have "sustained national or international acclaim", it seems to be implied that young persons just emerging into the "big time" will no longer be eligible for H-1 classification.

INS reiterates its five year cap on H-1 stays. Yet, the statute contains no authority for this limitation.

INS should not require all H-1 visa petitions to be adjudicated at RSCs. In cases of emergent need, local district directors should have the power to provide rapid service for cases arising in their districts and about which they are likely to have full and immediate information.

(5) E. I. DuPont De Nemours & Company

Du Pont does not believe that INS should impose any formal training requirement because it negates the idea that an individual may gain the equivalent of a formal education through experience. Du Pont employs many individuals lacking formal college education who have achieved significant accomplishments.

Although the documentation requirements for professionals who do not have degrees are somewhat less stringent than their 1986 equivalents, they remain overly restrictive. Few of Du Pont's high-level employees in technical sales and marketing will have published material by or about them. There are no state or U.S. license requirements for technical sales and marketing executives, nor are there relevant technical sales and marketing professional associations. An acceptable documentary requirement would be a letter/affidavit from prior employers or experts in the professional field verifying professional achievements.

Although the six factors for prominent business persons are more liberal in detail than their 1986 counterparts, the fact remains that very few aliens will be able to meet these requirements. The fourth factor, requiring responsibility for a workforce of at least 100 employees, half of which must be professional or managers, is not realistic in corporate America today. In this age of corporate restructuring, decentralization, and downsizing, large companies like Du Pont are eliminating middle managers. In addition, putting third preference requirements into the H-1 context is not only too restrictive, it also confuses the standards for each category.

Du Pont supports the part of this proposal alleviating the documentary burden for petitioners having a significant record with the Service of consistently obtaining approval of H-1 petitions. Du Pont does nor support the part of this proposal for petitioners with a significant record of H-1 denials having a higher burden of proof. How many denials would it take to be placed on the significant denial list? Once on the list, could the petitioner get off?

(6) John Quinn, Attorney

Whether an alien is actually practicing at a professional level is evidenced by such facts as the alien's actual duties, the normal education level of his peers, and memberships in professional organizations. Where an alien is holding a position normally recognized as professional, that fact is logical prima facie evidence of his qualifications.

There is no logic to setting any particular formula for the factual issue of equivalence. In determining whether a person is an H-1 professional by virtue of training, it must be remembered that unstructured apprenticeships are the means for accomplishing professional training in many parts of the world.

Use of the H-2 visa by entertainers is entirely unrealistic. The nature of the industry causes many contracts to be made on short notice, and often verbally. Adjudication of an H-2 petition usually takes months, which has the practical effects of denying these visas as a matter of procedure, rather than on their individual merits. In entertainment occupations, the real job skills required are almost invariably considered subjective or unduly restrictive job requirements, thus barring virtually all H-2 labor certifications for entertainers.

Virtually all artists and entertainers must put on their shows in a strange location or on short notice, and their performance depends upon artistic subtleties that in turn depend on support personnel. The requirement that an accompanying alien must be performing support serviced which cannot be readily performed by a U.S. worker appears to be unrealistically restrictive.

The requirement of sustained national or international acclaim is unclear, unprecedented in the law, and should be promulgated only as an evidentiary guideline in determining prominence. Any definition of prominence must consider the reality of the modern media and entertainment industry, where a talented artist may become a world-wide sensation overnight.

Labor unions have no particular expertise in judging a person's prominence, and as representatives of the U.S. workers are institutionally biased. We suggest looking to recognized critics instead, such as university and arts departments or newspaper critics.

It is a violation of equal protection, due process, and probably several other fundamental constitutional principles to set different evidentiary standards for different petitioners. This regulation cannot be expected to survive a serious constitutional challenge.

U.S. within 120 days of a timely filing of an extension on showing proof of filing, despite expiration of a prior petition or visa.

It seems inconsistent that the Service should cite the H-2B as an alternative petition to H-1s for certain workers, and yet make those H-2s procedurally more difficult to obain. We suggest an expetited procedure, such as for agricultural workers, and that admission would be for a full three years.

To make the H-2B classification useful to employers faced with labor shortages, the phrase "temporary services or labor" should be deleted from the statute. A workable standard of temporary would be 1) any job lasting less than a year's duration is temporary, and 2) any job lasting more than one, and up to three years is temporary if the employer documents the probability that the job will end within that time.

Under the H-3 classification, the Service must bear in mind that much of the world trains its workers in apprenticeship programs, and it is generally accepted that unstructured on-the-job training is highly effective. In addition, denial of an H-3 petition solely because training may be available in the alien's native country is beyond the scope of the statute.

(7) Joseph Minsky, Attorney

The new proposed rules are a marked improvement over the previous proposal. I believe the most noteworthy improvement is the inclusion in the definition of profession the terms "business and accounting".

The criteria are still weak in that acknowledging that one must have at least two years of college training in order to qualify to be a professional is not in tune with the reality of the business world. I would recommend that one who has adequate specialized and professional experience combined with college level education can be deemed equivalent to the U.S. baccalaureate or higher degree.

The biggest failure of the definition of profession is the omission of any recognition that a liberal arts degree may be the appropriate college degree. Many American businesses prefer that recruited graduates for business positions come with a liberal arts degree because that provides them with the intellectual insight and educational development together with the mental flexibility necessary for one to be successful in a business career. In the fields of advertising, public relations, editing or any area in writing, a liberal arts degree is usually the most appropriate.

I particularly appreciate and approve the definitions setting forth criteria for one to be deemed prominent in the business community. However, I believe some of the criteria listed are not realistic. The requirement of $25 million dollars is much too large. Many companies with sales in the $10 million range require a professional or prominent individual as general manager or chief executive officer.

Requiring that the work force of 100 employees or more have at least 50% professional, supervisory, or managerial employees is not realistic. What about the manager of a work force of 1,000 when only 200 are of professional, supervisory, or managerial status. I would substitute in its place the phrase, "responsibility for work force of 100 or more which includes professionals, supervisory, or other managerial employees.

In adjudicating petitions, I do not believe it is appropriate to differentiate between those companies that have a significant record of Service approvals for H-1s and those who may have not had a good record. Proof of appropriate evidence should still be a requirement from all applicants.

The whole system for H-2B is ridiculous and out of line with reality. The requirement of a temporary labor certification with yearly renewal is too great a burden to require of any employer. Requiring readvertising and processing through the laborious DOL, both the state and federal level is and overwhelming burden for any employer.

It is practically impossible to obtain an H-3 visa since INS places a heavy burden upon the assurance that there is no productive labor involved. The purpose of H-3 is to receive practical training in that occupation. The best way to receive training is to do hands on work; observation and general studies are no substitute. The standard for productive labor should be modified so that it can be realistically involved with the training. The initial H-3 should be for a period of up to two years with a cap of two or three years.

(8) Lisa Enfield, Attorney

I commend the Service for attempting to adopt a more flexible approach for H-1 visa petition procesingl We believe the proposed rule represents important steps in the right direction.

This rule is excellent in that it recognizes that significant professional expertise can be gained outside of the university pursuant to on the job experience. However, we would suggest that the INS permit an approval of a petition even where there is no college degree.

There are several consulting and evaluation firms throughout the U.S. that are now offering the service of evaluation of experience. These services evaluate the alien's credentials according to the objective standards set forth in the Model Standards for various Bachelor of Science degrees. INS should recognize that significant expertise in a profession maybe acquired without attending university.

We would favor a case-by-case analysis which would include a review of the employer's hiring proactices pertaining to degreed and non-degreed candidates. If data in this regard is available, can the employer prove that specific non-degreed employees have been able to achieve promotions, increased responsibility, and professional recognition at the same level as those who are degreed.

(9) American Nurses' Association

ANA encourages the Service to continue to emphasize the temporariness of H-1 alien workers.

We would favor a case-by-case analysis which would include a review of the employer's hiring practices pertaining to degree and non-degree candidates. If data in this regard is available, can the employer prove that specific non-degree employees have been able to achieve promotions, increased responsibility, and professional recognition at the same level as those who are degree.

(9) American Nurses' Association

ANA encourages the Service to continue to emphasize the temporariness of H-1 alien workers.

We do not believe the Booz Allen study substantiates its assertion that H-1 nonimmigrants do not have an adverse impact on the labor market in term of depression of wages and working conditions.

ANA supports the clarification regarding criteria determination for H-1 classification of aliens. We endorse the inclusion of the definition of "profession" as criteria for distinguished merit and ability. At this time we believe it is important to have flexible alternative ways by which a person may qualify as a member of the professions, because a registered nurse can graduate from a baccalaureate, diploma or associate degree program.

ANA is especially pleased to see the licensure requirements for H classification continue to mandate the passage of the CGFNS or proof of state licensure before a nurse may engage in the practice of nursing.

We agree with the limitation on approval of an H petition where licensure is required and the necessary licensure has not been attained. Such a restriction will help prevent abuses of the system and ensures qualified nurses for the U.S. public.

ANA has concerns that the Service has not clarified the utilization of H-2B classification as adamantly for nurses as it does for graduates of medical schools. We do not believe that temporary services or labor applies to health care services, as data indicates that duties attendant to those services will escalate and therefore, the employers" needs are not temporary.

ANA supports the provisions which limit approval of H petitions when a strike or labor dispute is in progress.

Congress' recent legislation the INS proposal do not address the problem of adjustment to permanent resident status for Filipino nurses. The ANA supports the efforts of foreign nurses who wish to remain in the U. S. to appropriately pursue permanent resident status. As a cadre of experienced nurses, we believe those currently holding H-1 visas should be allowed to remain in the U.S. if they so wish.

ANA believes that any requirements for H-1 visas for nurses should also include criteria to demonstrate that hospitals are decreasing their reliance on foreign nurses.

(1) Eugene Flynn, Attorney

You propose to amend the regulations to limit those individuals who had always been considered "prominent because of a specific, limited act or ability which is a limited part of a whole field to such "unique" individuals solely in the entertainment field and solely when such individuals are coming to the U.S. for educational or cultural purposes and not when they are coming to perform on a commercial basis.

I firmly believe that when, in the past, personnel have been presented with the Matter of Kim test as to who is prominent for H-1 status; when the uniqueness of the alien has been pointed out to them; when they determined that such uniqueness raised the alien to a level of prominence due to a specific, limited act or ability, then Service officers at the district office level have for twenty years, made proper adjudications. It was only in 1987 when the new central office concept of when someone could be "prominent" came into being that H-1 denials began to mount up.

On the issue of what combination of education and experience creates the equivalent of professional status, your concept that the alien must have completed at least two years college-level training would prevent individuals who are professional but who have never had college-level training from proving that they are professionals. This is a ludicrous position.

At paragraph (h)(6)(iii)(E), I would add after the word training "or is not more than offset by the time spent by other employees in training the alien".

At paragraph (h)(6)(iii)(C), I would add after the word field "unless the petitioner conclusively proves that a short period of training is absolutely necessary for someone with such substantial training and experience in the field due to a specialized application or other unique reason proprietary to the petitioner.

Your position that an H-3 trainee should not be allowed to change status, or be readmitted to the U.S. in H or L status until the alien has been out of the U.S. for six months makes no sense. The positions abroad for which aliens are being trained may no longer be available when the training program ends for legitimate business reasons.

It would be much better for you to simply recognize the professional nature of business executives now, rather than attempting to carve out what constitutes "prominence" in the business area. Canadian managerial consultants will be professional if the Trade Agreement goes into effect, and the Service will be hard pressed to defend a position that says the same type of individual from elsewhere in the world is not a professional.

The only place I can think of where half of a workforce would be made up of supervisory, professional, or managerial employees would be in an agency of the federal government.

I hope the Justice Department never tries to point to the Booz Allen study as some sort of objective, accurate, outside source. The Booz Allen study is not a reliable one. Their sampling is inaccurate. The statistical conclusions are ludicrous.

(11) Cornell University

We commend the Service for proposing clear guidelines to define a member of the professions. We also commend you for the proposed extension of visa petition procedures and waiver of actual evidence, such as diplomas, for petitioners with a record of H-1 approvals. These measures will considerably lighten the workload of practitioners in the field.

We urge you to consider the eligibility of liberal arts graduates, who are often offered upper level professional employment immediately upon leaving college, for H-1 visa status. Skills in critical and flexible thinking, analysis, and effective writing and speaking are hallmarks of the liberal arts graduate. Such skills are widely sought after by most industries and businesses in the United States.

Schools and universities such as Cornell often seek to employ people with certain proficiencies, such as language skills, whose baccalaureate may be in other fields. These people often have BS degrees in fields such as history or anthropology. We would hope to continue to hire this kind of worker in the future.

(12) Opera America

We find that the proposed regulations represent a significant improvement over the current rule. For the arts, they clarify the criteria used by the INS and provide for a more fair review of applications. We felt that many of the areas that we found problematic in the past were addressed objectively in the proposal.

In regard to the section "petitioners with a record of H-1 approvals", we feel that it is not clearly stated that petitioners for prominent aliens in the arts, cultural, and entertainment fields are to be included under this section.

You should change "shall" to "may" in the paragraph regarding consultation with unions and management organizations.

(13) Universal City Studios, Inc

We are most concerned with the requirement that the entertainment industry must process our H-1 visa petitions solely at the RSCs. Expedited processing of H-1 petitions is critical to the entertainment industry if an artist or other essential talent becomes ill or is injured, requiring his or her replacement immediately or a top actor or director becomes available because his or her deal falls through at another theater.

The very nature of television series production requires that we be able to secure an H-1 visa for Guest Stars and sometimes directors within a few days and occasionally within one day.

The regulations require a showing of "sustained national or international acclaim". We feel that this requirement is not realistic and will eliminate many individuals who should properly be accorded H-1 visas as prominent artists in their particular fields.

The provision that the support services for the principal H-1 artist cannot be readily performed by a U.S. worker in order to qualify for accompanying classification will eliminate eligibility for critical accompanying crew members upon whom the success of the primary artist in a motion picture, recording, touring or television production depends.

There is no question but that the artistic integrity of the primary H-1 artist's work would be jeopardized by elimination of such key personnel as the camera operator, gaffer or grip or the sound and lighting engineers to say nothing of virtually the entire road crew for musical artists. A U.S. worker would not understand the subtleties of the aesthetics and sensibilities required by the creative relationship with the principal H-1 artist.

The requirements that the support services for the principal H-1 artist cannot readily be performed by a U.S. worker or that the alien possess significant prior experience with the H-1 alien or group in order to secure accompanying alien classification are likely to lead to unreasonable and arbitrary denials. We recommend elimination of these requirements.

It would be essential that an expedited process be implemented in order to make the H-2B process viable for the entertainment industry. Furthermore, the DOL would have to modify its currently unreasonable criteria in assessing the availability of U.S. workers.

(14) Schneider-Davis Agency

If these regulations are enforced, I will be forced out of business because the majority of my artists (all of whom have received H-1 in the past) fail to qualify for either of your two stated H-1 categories as they are neither huge stars nor do they classify as representing a narrow ethnic or traditional performing unit. The claim that H-2 would cover these artists is invalid given the time constraints and enormous amount of paperwork involved in obtaining such a visa.

The ruling would not only affect small agencies, but would adversely affect record companies, promoters, airlines, hotels, auto rental companies, restaurants, and other service oriented businesses these performers patronize while on tour.

(15) American Immigration Lawyers Association

Some of the proposed changes are beneficial, making needed reforms, setting guidelines, and explaining current policies. Others would harm American businesses engaged in domestic and international commerce; make unduly restrictive and hyper-technical requirements; fail to correspond with American business practices; violate basic concepts of equal protection law; and disregard recent federal court precedents. They would also foster time-consuming, unnecessary litigation.

The comment period should be extended for at least several months to give interested organizations and companies time to submit comments.

Although AILA recognizes the desirability of objective criteria for determining professional status, we believe the Service cannot lawfully issue rigid rules that will result in the arbitrary denial of all cases outside the chosen standard.

INS is proposing a rule that precludes from professional status all persons with less than two years of college-level training. Many professionals began their work careers before formal academic programs in their field were developed or have elected to gain professional qualifications through experience rather than formal education.

INS emphasis on evaluating the foreign training and experience as equivalent to a U.S. baccalaureate or higher degree is particularly inappropriate for an immigration statute which, by definition, applies to persons educated and trained outside the U.S.

AILA proposes an alternative which provides that a person can be deemed a professional on the basis of his or her entire education, specialized training and work experience.

The rule should make clear that, in appropriate professions, two years of liberal arts college training is sufficient for purposes of the "2 plus 6" rule since many American companies prefer employees with a greater breadth of education and experience.

AILA also proposes certain modifications of the definition of "profession" including deletion of "specific" and "in a specific occupational specialty" in the second sentence of the definition.

AILA welcomes the creation of a new prominence category for successful business persons; however, is concerned that the criteria that must be met are too stringent.

The requirement of managing an entity with an annual income of at least 25 million dollars or a salary of at least $75,000 will preclude virtually all managers if small businesses.

The standard of responsibility for a workforce of 100 or more employees which includes professional, supervisory, or other managerial employees will exclude almost all of the business persons this classification is meant to cover. AILA proposes that the specific numbers be deleted and that the general standards remain, providing examiners with the necessary flexibility to adjudicate each case on all of the material facts.

Concerned that the awarding of H-1 status to business persons on the basis of prominence not prejudice the efforts of their employers to seek third preference status for them as professionals.

One possible solution to this problem would be to view the achievement of business prominence as another way of demonstrating professional status for H-1 eligibility.

Regarding professionals with 2 years of education and experience, these professionals must also provide additional evidence of professional standing and recognition. These additional requirements are confusing and impose without justification new burdens on business petitioners that far exceed the statute's requirements.

AILA also recommends that "reliable authority" should be substituted for "recognized authority". INS should delete the requirement that the authority be acknowledged by the Service as an acceptable source of information. Examiners would have to qualify experts before admitting their advisory opinions. Opinions should be accepted from reliable persons who can demonstrate familiarity with the criteria for qualifying and entering into an occupational field.

Requiring "sustained" acclaim will impose an unrealistic criterion on H-1 visa petitions in the entertainment industry. Although a sustained record of success may properly be considered, the key factors in the H-1 process should be the creative abilities of the artist, popular or critical acclaim, and commercial marketability at the present time. If aliens have achieved national or international acclaim, it should not have to be sustained.

The exclusion of all folk, ethnic, or culturally unique artists who are coming to the U.S. primarily to perform at commercial venues or who have commercial sponsors is arbitrary and without basis in the wording of the statute. Commercial artists who perform at a commercial function may still be recognized exponents of unique forms of artistic expression.

For the test for determining whether or not accompanying aliens may enter as derivative H-1 nonimmigrants, we recommend alternative language which makes clear that satisfying the standards of essential to the successful performance and significant prior experience and critical knowledge so as to render success dependent upon his or her participation are the essence of establishing that their support services cannot be readily performed by a U.S. worker

AILA recommends that in certain circumstances petitioners may continue the current practice of filing with either the district office or the RSC. The system of remote adjudication is not well designed to deal with the truly time sensitive cases which so often occur in the entertainment industry.

AILA concurs with the clarification the use of agents but would request that the final rule clarify the phrase "an established agent".

There should be language inserted into the regulations to clarify that an agent petitioner is not the employer of record and is not responsible for withholding and other tax payments.

We endorse the provision that holding an unrestricted state license to practice a profession is sufficient to qualify a person as a member of a profession.

Regarding the provision concerning licensure wherein a petition will be approved for only one year if the person does not have a permanent license, and will not be extended if permanent licensure is not obtained within that one year, we do not understand why the person cannot continue to qualify based on a temporary license.

The regulations are unclear on the issue of H-1 classification for nurses who have passed the CGFNS exam and are waiting to take the NCLEX exam. What remains unclear is the treatment of nurses in the 21 states which do not grant temporary licenses.

The process of establishing the temporary nature of a position is so onerous, and the procedure is so time consuming, that few employers take advantage of the H-2B statute to obtain such visas for temporary foreign workers. An employer should have manageable, expeditious avenues to allow for the entry of legal workers if the employer can demonstrate that the need for work is temporary, regardless of whether the underlying job can be described as permanent or temporary.

Reliance on the advice of DOL should be limited to U.S. worker availability and adverse effect. Only the Service should determine whether the employer has demonstrated that his need is temporary. In order to delineate more fully the roles of DOL and INS in the H-2B procedures, AILA recommends that the regulation clearly define that INS alone shall determine whether the work is of a temporary or permanent nature.

H-2B petitions should be handled in a priority, expedited fashion since the employer's need for services is of a limited nature.

AILA recommends elimination of the requirement for certifying all petitions to the Commissioner where no labor certification has be issued.

The procedure should be available in H-2B cases where an association representing members in a given geographical area may wish to file an application for its members, thereby eliminating the need for each member to file on its own.

When the names of the beneficiaries are unknown at the time the petition is filed, AILA recommends that INS allow the employer to file more than one petition involving the same labor certification, and permit such filings at different times as the names of the beneficiaries become known. The initial petition would reference the entire number of aliens who will be allowed to enter, and subsequent petitions would reference the I-171C file number and include a copy of the temporary labor certification.

A "one-time occurrence" is too restrictive and requires that an employer assert that it has never employed workers to perform similar services or labor in the past. A better adjective might be "infrequent".

Under the "seasonal need" definition, we recommend that the last phrase relating to a vacation period for the petitioner's permanent employees be deleted. In some industries where seasonal employment is common, the petitioner's permanent employees work for short periods of time and may consider the time when they are not employed as vacation, such as in the swimwear manufacturing industry.

Training under H-3 would not be exclusively limited to the beneficiary's interest. In many instances, the training is utilized to further a business or related interest of the petitioner. Training programs should not be limited to preparing an alien for a particular career overseas.

With respect to the training itself, instruction should be defined to include in-house instruction provided by the petitioner as well as classroom instruction, both of which are distinct from on-the-job training. Training opportunities should not be denied aliens with some or even substantial training and experience in the proposed field.

AILA believes that all H-1 petitions should be adjudicated according to a single, uniform standard and that all petitioners should be held to the same burden and standard of proof. We recommend that the proposed disparate treatment be withdrawn.

INS's attempt to set an absolute limitation on admission with respect to H-2B and H-3 visa aliens is ultra vires. It is not justified by the language of the statute or its legislative history.

With respect to H-2B workers, the basic issues involve the availability of United States workers, the effect of admitting foreign workers on wage levels and temporary intent. There is no logic underlying an absolute limit on the length of H-2B status.

With respect to H-3 visa holders, it is arbitrary that a training program should be valid for 24 months, but not for 25. Each case must be examined separately. AILA recommends that the initial petition be valid for as much as two years with six month extensions permitted.

The elimination of appeals from denials of requested extensions of stay will surely result in increased litigation, contrary to what the Service presumably intends.

H-2B aliens are as capable of having the same lawful dual intent and respect for the terms of a temporary stay as an H-1 or L-1 alien.

With respect to H-3 trainees, AILA agrees with the Service's position. Since an H-3 trainee is generally gaining knowledge or skills to be applied to a job in the alien's home country, the filing of a preference petition would contradict the stated aim.

(16) AFL-CIO

A simple comparison of their basic provisions shows that this proposal is in essence the proposal INS put forward on August 8, 1986. The proposal can only be viewed as an effort to circumvent Public Law 100-459, albeit one doomed to failure.

Because we believe that the present proceeding is contrary to Congress' express will, we do not think it appropriate to address the merits except to a very limited extent. In an excess of caution, to ensure that silence not be taken as assent, we attach hereto the comment filed by the Dept. of Professional Employees in the August 8, 1986 proceeding.

In light of the INS reliance on the Booz Allen report, we call your attention to an analysis of that report, while not complete, is more than sufficient to demonstrate that the study is deeply flawed and unworthy of reliance.

We take this occasion to concur in the comments being submitted on the proposed H-2 redefinition by the International Ladies' Garment Workers Union (ILGWU).

(17) Service Employees International Union, AFL-CIO

SEIU believes that it is appropriate to implement these regulations prior to the completion of Congress' consideration of the pertinent issues, including a review of the Booz-Allen study.

The definition of distinguished merit and ability is inordinately broad in its scope, determining that an alien who is a member of a profession per se fits under the H-1 classification.

We question the conclusion by Booz Allen that H-1 nonimmigrants admitted to the U.S. do not have an adverse impact on the labor market in matters of wages and working conditions. This conclusion is not clearly derived from the facts reported in the study.

(18) International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators (IATSE)

IATSE strongly opposes the proposed rules that would make it even easier than it already is for foreign film crews to obtain H-1 visas.

To allow any alien with a baccalaureate degree or its equivalent to enter the U.S. under an H-1 visa to accept employment for us to six months is a gross distortion, if not perversion, of the distinguished merit and ability test. It is no longer a mark of distinction, of unique talent and ability, to be a graduate of a college or university.

When aliens enter this country, they almost always work under non-union rates of pay and conditions which are substantially inferior and this provides the financial incentive for many employers to seek their importation. At the very least, INS rules should require aliens with H-1 visas to meet prevailing wage rates paid here.

The rules would pyramid one injustice upon another by permitting support staff to gain entrance into this country under the guise of being an essential accompaniment to an alien who is granted an H-1 visa on his merits.

The rules regarding support staff, regardless of the professed restrictions, will open the floodgates to the importation of literally hundreds of thousands of unskilled, untalented aliens whose services can easily be performed by Americans.

The situation rarely exists where a fully competent American technician or artist would not be ready, willing, and able to accept available employment here instead of using an alien.

(19) Department of Interior, Office of Territorial and International Affairs

Interior is concerned that the rule would significantly retard private sector growth in Guam. We, therefore, request an exemption for Guam from the proposed rule.

The Government of Guam has estimated that $2 billion in hotel and residential construction is either underway or scheduled to begin in the next few years. This work will require a peakload number of H-2 workers, significantly more than would be allowed under the proposed rule.

We are particularly concerned that the definition of need in the rule will severely constrain contractors from hiring H-2 workers. The requirement that contractors hire U.S. mainland workers also presents significant cost and logistical problems, which could have inflationary repercussions on the local Guam economy. Similar policies have been tried in the past with little success.

Removing the Governor's authority to determine the prevailing wage rate could also have adverse political and economic impact on the territory.

(20) Guam Contractors Association

We request that the requirement for recruitment in other areas of the United States be stricken. It is based on a false premise and imposes a discriminatory, ineffective, and costly burden on Guam contractors. During the last year, such recruitment was tried extensively in the U.S. mainland without any result. Guam is simply too far away and its lifestyle too different to obtain workers from the mainland.

We believe that wages and working conditions should not cover more than Guam. Having the U.S. wage as a whole relate to Guam wage is simply unrealistic.

The definitions of the types of temporary need preclude a petitioner from qualifying to import H-2 workers, or at the very least, makes use of H-2 workers extremely difficult for established contractors on Guam.

Although the INS has recently rationalized the admission of H-2 construction workers in Guam as based upon a peakload need, it did so in the absence of so confining a definition. It's rule of them is that when the demand for construction necessitates an employer to substantially augment his work force above its historic levels, a temporary and peakload need exists. The proposed definition of peakload is too narrow.

We propose that the definition be amended to provide that in Guam a peakload need may also be established if the Governor of Guam has determined that U.S. workers are not available on Guam in sufficient numbers to fill vacant jobs in the construction industry and that the nonimmigrant alien workers are needed to sustain the island's construction industry.

The Governor should be able to certify the need for temporary workers for up to one year at a time and be allowed to extend the stay in increments of up to one year at a time to a maximum stay of three years.

(21) Guam Hotel & Restaurant Association

The definitions of the types of temporary need virtually preclude a Guam contractor from being able to import construction workers.

The rule would also require employers to seek workers not only in Guam but throughout the United States and it would require that wages be pegged to a national standard rather than the prevailing rate in the area where the employment is offered.

The rule would also take from the Governor and give to the Commissioner the power to determine the adverse effect wage rate.

(22) James S. Brooks, Attorney

The proposal could effectively eliminate the ability of contractors to employ H-2 workers and I am concerned about the effect this might have on our fragile island economy.

The definitions for determining whether a petitioner needs H-2 workers virtually preclude a guam contractor from qualifying.

The proposed rule would compel contractors to seek American workers not only in Guam but also in other areas of the United States and its territories. The idea has been tried in the past without success and it would materially slow the recruitment process.

The proposed rule would divest the Governor of Guam with the authority for determining the prevailing wage used to measure whether the pay offered for an H-2 worker would have an adverse effect on local employees.

I urge that the present regulation and the Administrative policy found at section 214.2(h)(1) of the Operating Instructions be kept in effect for Guam until such time as consultation can be had and a revised rule developed which takes into consideration Guam's unique needs and circumstances.

(23) Shanachie Records Corp.

The implementation of these regulations will be harmful to our business as well as harmful to many bookers, performance venues and management companies in the

United States. The country as a whole will be harmed because these regulations will accelerate a process of cultural isolation which is already making the U.S. less competitive in the international arena.

Many of the world's great artists have not experienced great acclaim in mainstream media or commanded high fees or performed at major mainstream venues. Only an expert in their particular field would know the worth of these artists. They would not qualify under the standards for sustained national or international acclaim.

The second category for artists is particularly pernicious by demanding that the artist represent a narrow and clearly identifiable performance or presentation. Many significant artists simply do not fit so neatly into a narrow category. The things such artists are asked to supply are also unrealistic because the artist must supply all, not simply one, of the various requirements.

If these regulations had been in force during the past 20 years, a number of artists who have become major performers in this country would not have ever achieved such success, such as the Chieftains.

The implementation of these regulations will definitely harm both the cultural interests of the U.S. and the national economy as many American Businesses will be harmed if foreign artists are not allowed to perform in the U.S.

(24) Kentucky Center for the Arts

I urge you to restructure any current or new directives that would effectively bar all artists who haven't received such major commercial or media success that even government bureaucrats recognize their names.

If various artists or ensembles do not meet high artistic standards, trained professionals who run concert series will not present them, thus making any restrictive directives unnecessary.

Your restrictions constitute a perfect "catch 22". You cannot tour America until you are a commercial success or on a major record label, while the key to achieving both of those is an American tour. If these restrictions were reciprocal in Europe and other countries, many of our greatest artists who truly represent the cultural diversity of the U.S. would be banned from playing outside America.

(25) Colleen J. Matan
(26) Earle Hitchner
(27) Robert Borcherding
(28) Melba Schmidt
(29) Joshua Bloch
(30) Dean Rubine
(31) Monica Cellio
(32) Marion Kee
(33) Bay Area Acoustic Arts Association
(34) Bruce Mocking
(35) Canadian River Music
(36) E. Randy Bowles

At stake here is more than the opportunity to see lesser known European and world artists. Restrictive American visa policy and worldwide reprisals effectively cut off the lively exchange of ideas, music and talent, curtail freedom of expression and serve to make the U.S. only more insular and xenophobic as different voices from different cultures are not allowed to be heard.

You should eliminate those aspects of the regulations which completely stymie overseas artists who want to come here. The U.S. has refused to place checks on international economic trade. It should do no less for international cultural trade.

The sharing of music helps sustain the folk culture of the U.S. which is no longer as vast as it once was - mass media has made its existence very tenuous. Basing the worth of a performer's visit on fees, record albums, etc. would exclude the majority, if not all, of traditional folk artists.

ATTACHMENT 5

BOOZ·ALLEN & HAMILTON INC.

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December 12, 1988

Mr. James Puleo
Assistant Commissioner for Adjudications
U.S. Department of Justice
Immigration and Naturalization Service
425 I Street, N.W.
Washington, D.C. 20536

Subject: Discussion of the AFL/CIO Analysis of Our Report on the H-1 Program

Dear Mr. Puleo:

We have read with considerable interest the remarks prepared by the economic analyst for the AFL/CIO concerning our report, Characteristics and Labor Market Impact of Persons Admitted Under the H-1 Program. We are of course pleased that the analyst generally concurs with our opinion that statutory adjustment of the program would be desirable. We also agree with his conclusion that further study of the program's operation would be desirable, as we stated in the report.

However, we believe that many of the points which the analyst attributes to the report seem to stray from the context in which they were made. In addition, the analytical arguments that the analyst presents in an attempt to refute our conclusions are not well-founded. For these reasons, we cannot accept his conclusions concerning our study. We stand by the conclusions of our study as stated in the report.

To further emphasize this point, following is a discussion of some specific aspects of the analyst's discussion and conclusions.

1. The analyst quotes the report as stating "we do not believe that this use of the H-1 program corresponds to its original statutory intent." This seems to imply that we thought that all use of the H-1 program was at variance with the intent of Congress. Of course, we only stated that the application of a broad definition of "distinguished merit and ability," to include entry- and middle-level professionals, created a situation that is, at least, confusing to the public and contains the possibility of adverse impact on American workers. We believe our proposed statutory adjustment, coupled with a stricter regulatory interpretation of "distinguished merit and ability," would serve to eliminate most of the problems associated with the H-1 category.

2. The analyst makes an unsubstantiated statement that we should have typified "an overwhelming proportion" of all H-1 admissions as "entry- to middle-level." This of course would have been at variance with the information that we obtained from INS administrative records, which, we stress, were statistically representative of all H-1 petitions in the nine states during the two-year period that we studied. In our detailed discussion of the wage distribution of H-1 admissions by occupation, we demonstrated that while certain

proportions of H-1s are in fact entry- to middle-level, a sizeable proportion are high-level workers who would be deemed to be of "distinguished merit and ability" under any reasonable definition.

3. The citation of our result about H-1 nurses in the New York City area, coupled with a statement that "clearly such a large number is not what Congress had in mind when authoring the H-1 provision for persons of distinguished merit and ability," seems to imply that Congress had some implicit target or limitation of numbers of admissions in mind when authorizing the program. In fact, Congress clearly did not associate any numerical quota to the operation of the program. We would refer the analyst to the legislative and administrative history of this program.

4. The analyst seems to be willing to attribute to us highly generalized conclusions about the H-1 program, even though we clearly did not make such representations in the report. He states that "in my judgment, a two year sampling of data . . . is not adequate for evaluating the interplay of supply and demand in the job market." Of course, we agree that the analysis of two years of data provided only a "snapshot" view of the workings of the program, although these data were sufficient to develop reliable estimates about the occupational and some other characteristics of persons admitted during this period. At no point did we suggest that we could evaluate all of the supply and demand conditions in a labor market, and we based our major conclusions only on the proportionality of H-1 workers to total employment by occupation.

In addition, we also recommended that data for longer periods of time should be collected and analyzed. Most importantly, we stated that we were not able to analyze the potential labor market impact of aliens who use the H-1 program as a "stepping-stone" for permanent admission. We understand the potential significance of this issue, and for that reason, we suggested that further study should be made of this issue.

5. In one case, that of nurses in the New York City labor market area, we did attempt to draw some inferential conclusions about the impact of H-1 admissions on wages, but these observations were extremely limited. In the context of our inferences, the analyst's assertion that

> "given this large percentage [of H-1 nurses in the New York City labor market area] and a rudimentary knowledge of supply and demand dynamics, one must assume that the presence of these H-1 nonimmigrants has had a negative effect on the job market for domestic nurses in New York, and on their salaries"

is surely an overstatement, and one that could not be subject to substantiation without a highly detailed study of the dynamics of the New York City labor market. (In this context, we would point out that the supply/demand dynamics in labor markets generally do not conform to simple classical supply/demand theory; there is of course an extensive literature on this subject that the analyst might refer to.)

In fact, some of the existing conditions and dynamics of the job market for nurses in the New York City area, would seem to argue against this assertion. These factors may include rigidities in the wage structure of the market in the New

York City area that have little to do with the presence or absence of H-1 nurses. For example, hospitals are generally constrained by Federal reimbursement provisions in their ability to make wage offers to nurses; the proportion of Federal beneficiaries in New York City is generally higher than nationally.

Within the context of the research that we performed, we were not able to fully evaluate all of the highly complex factors which contribute to the wage levels of nurses in New York City; such evaluation would require a far more detailed examination of the labor market dynamics than would have been possible in this project. We stress that we could not make other than an inferential estimate of the presence or absence of a wage effect due to presence of H-1 nurses; however, we believe that our limited assertion that the information we developed indicates little or no evidence of negative wage impact is accurate.

6. In continuing his discussion of our analysis of H-1 nurses in New York City, the analyst presents some very interesting data about relative changes in the "real wages" in the four major labor market areas that we analyzed in the report. While his conclusion that "in New York, which the report cites as experiencing the heaviest use of H-1 nurses, . . . the real wages of nurses increased at a rate far behind other cities," seems striking, we believe that his use of the BLS data is statistically incorrect. His further inference that this is correlated with the incidence of H-1 nurses we believe to reflect an unwarranted assumption about causal factors in labor markets.

The statistical problem lies in the nature of the CPI itself, and its relevance to evaluating wage levels. The analyst may not be aware that the CPI measure was revised during the period that he discusses, and that this has led to substantial controversy concerning its comparability over time. Most analysts believe that this is not a major problem in making comparisons over time at the national level, but that the effect of CPI revisions on relative changes of CPI between metropolitan areas is uncertain. This is particularly the case for the New York MSA, where there have been questions about the indices' weighting and its accuracy for time-series analysis applications.

Another statistical problem lies in the area of using CPI (again, particularly at the sub-national level) for translation of nominal wages to "real wages." There is an extensive literature debating the relative merits of use of various CPI components (such as housing, food, or a combination of both), or some other index (such as ECI or the GNP deflator) for this purpose.

Even beyond these purely statistical considerations, the validity of infering a causal relationship between relative wage level changes over time and the presence or absence of a particular source of labor (such as H-1 admissions) is doubtful. Many factors can influence occupational wage levels, including the specific conditions in each labor market area. In addition to certain rigidities in the wage structure of the New York City labor market area, both in the San Francisco and Miami labor market areas, there are special conditions that may have contributed to increasing wage levels. For example, there is evidence that nurses treating AIDS patients in San Francisco are paid premium wages; in Miami, the huge growth both in population and demand for medical services for the elderly may be such a factor.

7. The analyst suggests that our benchmark estimate of the total number of H-1 admissions in the nine states is radically incorrect, and implies that this invalidates the conclusions of the report. We call attention to the methodological appendix to the report, in which we stated that the FY 1987 benchmark estimate was based on a extrapolation of the nine months of INS data available to us at the time when we wrote the report. We would also call attention to the fact that the occupational estimates that we reported were based on ratio estimation, a statistical technique commonly accepted and employed in interpretation of these types of data (for example, by the Bureau of Labor Statistics in its Occupational Employment Statistics Survey program). We agree that it would be worthwhile to rebenchmark estimates to an updated level based on a full year of INS data, but we note that this rebenchmarking would have only a marginal effect on the estimates by labor market area, and in most cases, would imply adjustments to the estimates that would be barely significant statistically. In any case, these adjustments would have no measurable effect on our overall conclusions.

8. The analyst seems to misconstrue our our conclusions concerning H-1 entertainers. We directly stated that "we were not able to ascertain the presence or absence of adverse impact on American workers in that year [i.e., FY 1986]." We added that there were certain factors that indicated a mitigation of whatever impact may have been incurred, and that the FY 1987 data indicated a further reduction of impact. We were also careful to note the limitations in the data available to us, and that we could not make a definitive statement regarding this issue.

Also, regarding our analysis of H-1 entertainers, the analyst seems to think that our inability to obtain or report consistent wage data for entertainers reflects a weakness in our data collection efforts. In fact, reporting of total compensation to be paid is not mandatory in the petition process; for entertainers, the total amount is often conditional on factors such as ticket sales. We could not obtain reliable estimates of total compensation for H-1 entertainers, due to this factor. Again, we did not pretend to be able to make statistically reliable estimates based on incomplete wage data.

We would offer a final commentary on the analyst's remarks about our study. The H-1 program is highly complex, due to the coverage under it of a broad range of occupational workers. Similarly, the supply/demand analysis of characteristics of labor markets is highly complex; a considerable body of literature exists on this subject. Our study was necessarily limited to a statistical evaluation of characteristics of the H-1 program, and a discussion of inferences that could be drawn from the data available to us. We believe that our study is based on statistically sound methods, in which conclusions have been carefully crafted to avoid unsupportable assertions. We further believe that our research has been successful in contributing to an overall understanding of the workings and impact of the H-1 program, to a degree that was not known prior to this research.

We therefore wish to once again emphasize that we stand by the conclusions of this report, and that there is no element in the analysis presented by the AFL/CIO that would cause us to reevaluate or modify these conclusions.

Sincerely,

BOOZ, ALLEN & HAMILTON Inc.

Robert Haven
Associate

QUESTION: I understand the Service conducted a study in 1988 on the impact of H-1 non-immigrants on the American Labor Market.

Summarize the results of that study and include the INS's opinion of those portions where it either agrees or disagrees, and what changes, if any, were made to the rule as a result.

ANSWER: Congress requested that the Service determine the occupational backgrounds of H-1 workers, the impact of H-1 workers on the American work force, wages and working conditions of H-1 workers, and the impact of proposed regulations on admission of H-1 workers in industries now utilizing such workers.

The study conducted by Booz, Allen, & Hamilton addresses these issues in detail. The contractor made numerous findings and recommendations with which the Service concurs in principle. Overall, the study found that the H-1 non-immigrants admitted to the United States do not have an adverse impact on the labor market in terms of displacement of United States workers or depression of wages and working conditions. However, the study also found that a significant number of H-1 admissions are entry to mid-level professionals who only nominally meet the statutory standard of "distinguished merit and ability". These workers are, for the most part, sought by employers to meet labor shortages of American workers in occupational fields, such as nursing, engineering, and computer science. The contractor concluded that denial of H-1 petitions for such workers would result in undue hardship to employers and recommended a statutory change to establish a separate nonimmigrant category to accommodate them. The H-2 category would be inappropriate for these workers because it requires the jobs to be temporary in nature. Jobs filled by H-1 professional workers are usually permanent in nature. The study also found that proposed modifications to H-1 regulations will not have any significant effect on job availability for United States workers. No changes were made to the Service's new proposed regulations as a result of the study. A copy of the report on the study has been provided to the Committee.

QUESTION: Since the issuance of this study, is the Service aware of any new information that would affect its results?

ANSWER: Since the issuance of the study, the Service is unaware of any new information which would affect its results. However, there are other developments in terms of judicial review of Service decisions relating to standards for H-1 classification which could have far-reaching consequences.

Challenges to Service denials of H-1 visa petitions for professionals where the alien has significant experience but little or no college education are increasing. There are currently 15 lawsuits regarding professionals pending court action. Several have been decided which are contrary to long-standing Service policy that an alien must substantially meet the educational requirements combined with extensive professional experience in order for such education and experience to be equivalent to a college degree. The trend in court decisions is that experience alone can be substituted for college-level training. If standards for professionals are eroded to this extent by court decisions, the number of H-1 admissions will increase dramatically.

Delay in publishing clear standards for H-1 classification in regulations is contributing to the Service's inability to defend long-standing Service policy for the H-1 classification.

Seasonal Agricultural Worker Program

QUESTION: There have been numerous reports about massive fraud in the Seasonal Agricultural Worker (SAW) Program. What is INS's assessment of this situation?

ANSWER: There is no doubt that there has been substantial fraud in the SAW program. This is evident from the 650 INS investigations of organized fraud and the fact that over twice as many aliens than previously estimated to meet the eligibility criteria, have applied for status under this program.

INS believes that the high incidence of fraud is due primarily to two factors. First, because of the employer sanctions provisions of IRCA, many aliens in the United States who were not eligible for any of the legalization programs in IRCA were faced with the choice of emigrating from this country or fraudulently obtaining the required employment authorization documents to meet the eligibility requirements under the SAW program. Second, Congress recognized the highly informal nature of the farm labor market in this country and the consequent difficulty aliens would have in proving past performance of farm work. The legislation allows a more lenient standard for proving eligibility for SAW status. Further, it required the granting of employment authorization for an alien who presents a "non-frivolous" application and the approval of that application unless the Government disproves the evidence. INS believes that many aliens were so desperate they could not resist the temptation to purchase fraudulent documents in the hope of obtaining employment authorization and resident status.

QUESTION: What is the Service doing to detect this fraud?

ANSWER: Document Analysis Units were established at the inception of the Legalization program at each Regional Processing Facility to identify fraudulent documents, document vendors, and develop profiles of fraudulent document packages.

In FY 1988, the Service fielded 17 special SAW fraud task forces. As a result, more than 650 fraud investigations were undertaken. During the year, these efforts generated 75 convictions of SAW fraud document vendors, arrangers or brokers, stemming from over 285 completed or pending prosecutions. In the first quarter of FY 1989, 20 SAW fraud task forces were mobilized, resulting in 53 convictions of vendors, arrangers or brokers.

Of the 565,892 SAW applications pending adjudications at the Regional Processing Facilities on February 12, 1989, 74,303 are currently under investigation for fraud.

QUESTION: What penalties are being imposed on those who have committed fraud?

ANSWER: The penalties for fraud can range from a suspended sentence/probation to a felony conviction with a fine of up to $250,000. However, United States Attorneys do not generally accept SAW fraud cases for prosecution when only an applicant is involved. Efforts in the investigation and prosecution of fraud are being focused on document vendors and vendor organizations. These cases are being prosecuted and convictions are being obtained.

QUESTION: What is the Service's estimate of the number of aliens who may eventually be admitted through the use of fraudulent SAW applications?

ANSWER: The Service is still pursuing strategies to detect fraud and will not approve any application where eligibility is based on fraudulent documentation. We cannot estimate at this time what percentage of undetected fraud there might be.

QUESTION: Should the Congress be doing anything to deal with this situation?

ANSWER: The Service has determined as a result of investigations that some previously approved applications contain fraud. The status of Temporary Resident granted under Section 210 of the Immigration and Nationality Act can only be terminated upon a finding of deportability. Because of the limitations of the confidentiality provisions of the Act, deportation proceedings may be initiated only in those cases prosecuted for fraud. The overburdened court system makes it likely that only a small percentage of fraudulent activity will be prosecuted. This is especially true when the fraud does not involve a large fraud ring.

An amendment to section 210 similar to section 245A (b)(2)(A) and (B) would allow the Service to rescind the status of a SAW Temporary Resident. This authority would allow INS to terminate status if the alien was ineligible for SAW status based on fraud or if the alien has committed an act that makes him inadmissible to the United States as an immigrant under the provisions of Section 212 of the Act.

Drug Enforcement Authority

QUESTION: INS agents have become increasingly confronted with the drug problem when dealing with criminal aliens. What is the present role of INS in drug law enforcement? How do you envision this role evolving over the next few years?

ANSWER: INS performs several drug law enforcement roles which are collateral to INS immigration law enforcement programs. INS concentrates on the involvement of aliens in drug trafficking, and interdiction of drugs being transported across the land borders. INS also provides intelligence support to law enforcement agencies, conducts drug education as well as immigration programs in border communities and ensures that alien drug traffickers are prevented from entering or are deported from the United States.

INS drug enforcement activities generally occur within the framework of interagency operations. These include Operation Alliance and the Organized Crime Drug Enforcement Task Force (OCDETF), as well as many State and local drug task forces. Operation Alliance combines the resources of the INS Border Patrol, Customs Service, Drug Enforcement Administration (DEA) and State and local law enforcement agencies to stem the flow of drugs across the United States-Mexico border. OCDETF combines the resources of DEA, INS, FBI, and other Federal, State, and local agencies to prosecute drug smugglers and traffickers who operate in major cities throughout the United States.

INS plays a further role through the exclusion and deportation of alien drug offenders from the United States. Preventing the entry of alien drug traffickers, and expeditiously removing alien drug offenders from the United States disrupts drug cartel operations and increases public safety.

Intelligence analysts stationed at the El Paso Intelligence Center (EPIC), and the INS Forensic Document Laboratory, provide intelligence analysis support to enforcement operations.

Drug education programs have been presented to thousands of schools and civic groups and have won high praise from parents, educators and community leaders.

The INS role in drug enforcement will evolve in scale and scope. INS involvement in interagency operations will increase as new resources are provided for drug interdiction, investigations, intelligence support, and exclusion and deportation of drug offenders. INS will continue to use its unique authorities, resources and skills to combat drug trafficking and reduce drug demand among alien groups throughout the United States.

QUESTION: In connection with Operation Alliance, INS agents have, along with Customs inspectors, been given authority to conduct drug investigations. Has granting this authority proven effective in aiding drug interdiction and reducing duplication of effort?

ANSWER: Granting authority to INS officers to make arrests, and search for and seize drugs and drug conveyances has contributed significantly to the success of Operation Alliance. Based on the proven effectiveness of INS in the use of this authority, the Customs Service has granted all Border Patrol agents working at United States-Mexico border stations the authority to make searches, seizures and arrests of drug traffickers pursuant to customs laws.

This authority is only granted after appropriate training, to ensure that the officers have a solid understanding of the legal basis and restrictions of this authority. As a result, searches, arrests and seizures are made under Constitutional guidelines, ensuring due process for those arrested and protecting officers from liability for unlawful actions.

INS special agents have also received authority to conduct investigations of drug trafficking and make arrests and seizures while participating in Organized Crime Drug Enforcement Task Force investigations. The agents receive appropriate training and supervision by DEA to exercise this authority.

QUESTION: What have been the results of INS drug enforcement activities?

ANSWER: INS participation in drug enforcement has resulted in significant seizures of drugs and contraband, prosecutions and deportations of alien drug traffickers, and drug awareness training of 259,688 students and adults.

In FY 1988, the INS share of drug seizures on the Southern border was: 70 percent of marijuana; 25 percent of cocaine and heroin; and 80 percent of pharmaceutical and other dangerous drugs. INS effectiveness is well recognized by smugglers who have made death threats against INS agents or offered millions of dollars in bribes to try to stop border searches. Smugglers have even put a bounty on INS dogs used in drug enforcement.

The attached chart reflects the increase in INS effectiveness from FY 1982 to FY 1988. Over that period total INS drug seizures doubled in number, the quantity of drugs seized increased by ten times, and the street value of drugs seized was almost 60 times higher.

INS ENFORCEMENT

	1982	1983	1984	1985	1986	1987	1988
APPREHENSIONS (Thousands)							
Border	828	1,115.4	1,149.8	1,272.4	1,705.3	1,168.9	969.2
Interior	152	136	97.2	76.3	62.1	21.6	37
DRUG SEIZURES							
Heroin, Opiates	12	22	26	37	74	86	129
Cocaine	115	157	167	166	291	511	676
Marijuana, Hashish	2,227	2,352	1,187	2,056	2,769	4,282	4,449
Other Drugs	394	336	137	198	350	523	574
Street Value $ Millions	13.8	57.6	55.8	130	264.5	661.7	803.5
VEHICLE SEIZURES	5,164	6,925	8,775	10,348	13,965	9,723	9,677
DEPORTATIONS							
Drug Offenses	168	296	501	713	968	2,631	3,988
Other Crimes	228	538	568	728	1,136	1,646	1,640
EXCLUSIONS							
Crime & Drug Offenses	183	205	164	274	270	402	431

Apprehensions:	Number of arrests
Drug Seizures:	Number of seizure events
Deportations:	Number of aliens deported from US
Exclusions:	Number of aliens excluded from entry to US

SOURCE: Immigration & Naturalization Service

Central American Refugees

QUESTION: The number of aliens entering the country at Brownsville, Texas who request political asylum, has increased dramatically -- some 130 percent--in just one year. Applications jumped from 26,107 in FY 1987 to 60, 736 in FY 1988. Eighty-two percent of these applicants are from three countries: El Salvador, Nicaragua, and Guatemala.

This has created a severe backlog at INS' Harlingen District Office with many aliens requesting that their asylum cases be transferred to Miami or Los Angeles where they have family and friends. The Department of Justice, however, would like them to stay at their point of entry while the cases are processed and issued an order in December to this effect. The impact on the local community in South Texas has been overwhelming with immigrants sleeping in the woods, in tents, and in abandoned motels.

To try and relieve the obvious health and safety concerns of communities in South Texas, a Federal Judge ruled the Government could not prohibit the refugees from traveling while waiting for their cases to be resolved. This, in turn, has placed a tremendous burden on communities in South Florida who are trying to accommodate the sudden influx of Central American refugees to their immediate localities.

I have heard from both Senator Bentsen and Senator Bob Graham about the critical need to deal with this problem and am certain our new subcommittee member, Senator Phil Gramm of Texas, will have some questions on the matter also.

I understand the order allowing the immigrants to travel while their applications are being processed expired on Monday and the Department of Justice is once again restricting their travel while their cases are being heard. Does the Department plan on providing temporary shelter to refugees while their cases are being reviewed?

ANSWER: The Department of Justice has the authority to provide shelter, food, or other social service assistance to aliens who are applicants for asylum but who are also being detained pending the outcome of the review of their applications. Once granted asylum, aliens qualify for refugee entitlement, and social services provided by State and local governments may be reimbursed by the Federal Government. When aliens are detained and placed in deportation proceedings the INS is authorized to provide food, shelter and medical care to persons who are held in its custody. Aliens initially apprehended and arrested by the Border Patrol after illegal entry to the United States receive such custodial care. Similarly, when asylum applicants in the INS Harlingen district are denied, the applicants are issued an Order to Show Cause why they should not be detained and deported. In this manner they will have an opportunity to renew their asylum request before an Immigration Judge in deportation proceedings, but will not become a problem or burden for the local community until an Immigration Judge decides that they should be deported or in the alternative, that they should be granted asylum.

Aliens who have been denied asylum are being detained at the INS service processing center in Port Isabel, Texas or other contract detention facilities, or in the case of family groups, in a facility operated by the Red Cross under contract with the Community Relations Service of the Department of Justice.

QUESTION: Can the Department speed up the time it takes to process these applications for political asylum?

ANSWER: We have reduced to one day the processing time for the average asylum application being received in the INS Harlingen district. No step in the normal adjudication has been omitted. The full consideration of the asylum claim can be completed in one day, because we have adequate trained INS personnel available to interview all applicants on an immediate basis and an officer from the State Department's Bureau of Human Rights and Humanitarian Affairs is also present to provide an advisory opinion on each case. Normally the Service would allow at least 30 days for return of an advisory opinion when it is requested and the asylum application is mailed to the Department of State. Final, asylum determinations are based on a review of information provided with the application, the interview, knowledge of country's human rights conditions, and the advisory opinion provided by the Bureau of Human Rights and Humanitarian Affairs.

QUESTION: Has the Department estimated what additional costs we may incur through the detention of these refugees? What are your estimates?

ANSWER: We are reviewing potential resource requirements required to fund the South Texas Project. Currently, resources are being used to fund a reimbursable agreement with the Community Relations Service, which will provide for food, shelter and medical services; and the details and related costs of Border Patrol Agents, Detention and Deportation Officers, Immigration Examiners and other Service personnel essential to the project. INS estimates that the total cost of this project for the remainder of this fiscal year will reach over $30 million, if asylum applicants continue to be detained at the current rate.

QUESTION: The Immigration Reform and Control Act (IRCA) of 1986 authorized the establishment of a $35,000,000 fund to be used in meeting Immigration emergencies. Given the impact on local communities, such as Brownsville and Miami, will INS recommend using funds authorized under Section 11 (Immigration Emergency Fund) of IRCA? We have

never funded this program and I understand the President must first declare the problem an emergency before any resources can become available.

ANSWER: In our estimation, the problems in the Harlingen District can be satisfactorily handled with existing resources. In addition, the situation there has not been critical enough to warrant the Attorney General to request the assistance of State and local agencies. Consequently, we see no need in seeking the emergency funding provided for in IRCA.

Mariel Cubans

QUESTION: A year ago, we had great damage done to the Oakdale and Atlanta prison facilities due to riots by the Mariel Cubans. The Oakdale I correctional institution has been rebuilt and just last month commenced operating as a Federal detention center housing 1,000 sentenced Federal offenders.

The construction of Oakdale II -- The Oakdale Federal Deportation Center -- is currently underway with completion expected by the end of the year. This facility will house 340 convicted alien criminals from State and local jurisdictions and the centralization of convicted aliens will greatly enhance the INS' Deportation proceedings.

I have heard from my colleague from Louisiana -- Senator Johnston -- and am concerned there is already a need to increase the capacity at Oakdale II beyond the current projection of 340 beds. If we are committing resources to the construction of a new Federal Deportation Center and increasing our efforts in apprehending and expeditiously deporting criminals aliens from this country, shouldn't we provide adequate space from the outset?

Am I correct that the need is somewhere closer to a 1,000-bed facility? What would be the cost of this expansion in the current construction plans for Oakdale II?

ANSWER: Although the expansion would enhance the Federal Government's ability to detain and remove criminal aliens, it is not critical. The expansion of Oakdale II from 340 beds to 1,000 would require an additional $14 million in construction funds and the addition of 52 positions at a cost of $6 million.

The 1990 budget contains $2.2 million and 20 positions to staff the 340-bed Oakdale II facility.

Drugs - Border Enforcement

QUESTION: Drug enforcement efforts of the prior Administration in Florida and the Caribbean are said to have led to increased smuggling of drugs through Mexico and across the southwestern border. Operation Alliance was initiated to help combat this increase. Now, an increase in drug

smuggling appears to be occurring along the Atlantic and Pacific coasts, and perhaps even into the United States through Canada.

If increased enforcement merely moves the location of smuggling, is it worth the effort? Assuming that drug smugglers ultimately will seek the weakest links in the border enforcement chain, what is the cost that would be involved to replicate the South Florida and Operation Alliance initiatives for the entire United States border area? Can the nation afford this? Would monies be better spent in pursuit of other strategies, e.g., crop eradication/substitution, demand reduction, or non-interdiction law enforcement efforts?

ANSWER: A comprehensive strategy has been in existence for some time and has been implemented through Operation Alliance and Operation Vigilance. Operation Alliance is a highly successful interagency effort to interdict drugs and contraband smuggled across the southwestern border. Operation Vigilance, similar to Operation Alliance, has been initiated to interdict drugs along the northern border. Both of these programs coordinate the movement of resources, agents, and equipment from several agencies in an effort to respond to the shifting of smuggling activities. These operations indicate the usefulness of interagency border management strategies in combatting drug smuggling across the United States borders.

In order to determine the total costs of replicating this effort on the entire United States border, all organizations involved with Operation Alliance would have to be surveyed. INS estimates it would cost about $6.5 million for its interdiction efforts between the ports of entry.

United States Marshals Service

Seized Assets

QUESTION: The Justice Department established the National Asset Seizure and Forfeiture Program within the Marshals Service to centralize the management of seized assets. However, the GAO reported in 1988 that the physical transfer of seized conveyances to Marshals Service by DEA, FBI, and INS had only partially occurred.

Has the situation improved? If so, please explain. If not, could you tell us why it has not improved?

ANSWER: Conveyances constitute about seven percent of the value of all property seized by the Department of Justice. Real property and cash together constitute about seventy-five percent of the value of our total inventory of seized property. With limited resources, we have admittedly focused on the most serious problems. Our first priority was to develop and implement better policies for managing seized cash and real property.

This is not to say that we have ignored the management of seized conveyances, though. For example, more than half of all conveyances seized by the Department of Justice are seized in California, Arizona, or Texas. In the past two years, the Marshals Service has concentrated its efforts in assuming responsibility for the custody and disposal of seized conveyances in the Southwestern United States through a series of management and sales contracts entered into between the local Marshals and private contractors. Through these efforts, we have sold 2,101 cars, resulting in proceeds of more than $1.6 million.

QUESTION: The Marshals Service has a variety of important duties and responsibilities. Is it reasonable to expect the Marshals Service to assume custody and management of all Justice's seized assets? Would a contractor approach be more effective? For example, the United States Customs Service has a contract with Northrop Worldwide Services for seized conveyance custodial functions. Has the Justice Department evaluated the merits of contracting out for such functions?

ANSWER: The Marshals Service does use contractors extensively to store, maintain, and dispose of seized conveyances, as well as other seized assets. However, the Department has been skeptical about how effectively a national contract like the Northrop contract can be administered on a centralized basis for our purposes, and we remain concerned about the costs of such arrangements.

Centralization is an inherent difference between the Customs Service and Department of Justice programs. Customs management can make a decision and implement it without coordinating the decision among three other agencies. The Marshals Service, which was delegated the responsibility for managing all property seized by Justice agencies, cannot unilaterally impose changes in procedures on DEA, FBI, and INS.

In addition, the nature of property seized by the Department of Justice and the Customs Service is very different. Virtually all Customs seizures are currency, conveyances, and personal property. In contrast, forty percent of our seizures (in terms of dollar value) are real property seizures. For example, the Marshals Service has taken custody of a foundry in Wisconsin, a ranch in Texas, a recording studio in California, a sea resort in Florida, and a shopping center in Puerto Rico. The real property in Marshals Service custody is so varied, both in function and in geographic location, that it would be difficult for one national contract to provide for the custody and management of it all. However, the management of seized real property is, to a large extent, contracted out on a case-by-case basis.

Jail Spaces

QUESTION: How serious is the shortage of jail space for Federal prisoners?

ANSWER: The nationwide jail space crisis continues to worsen and is one of the most serious problems facing the Federal criminal justice system today. The United States Marshals Service (USMS) has custody of all unsentenced Federal prisoners, currently numbering over 10,800 each day -- an increase of nearly 50 percent since 1987. This increase exceeds the rate of growth previously projected by a 1987 USMS study. USMS now estimates that its daily prisoner load will reach almost 13,000 by 1990.

USMS often has difficulty finding local jail space for USMS prisoners as local governments have more and more difficulty finding room for their own prisoners. As a result, Deputies must transport prisoners ever-longer distances from court locations -- sometimes hundreds of miles -- to find overnight bed space for them. This not only severely strains USMS's personnel resources, it also heightens concerns about security, especially in light of the more violent breed of prisoner coming into USMS custody as a result of accelerated drug enforcement efforts.

Despite the difficulties involved, the USMS is dealing effectively with the jail space shortage as discussed below.

QUESTION: What actions has the Marshals Service taken to address the jail space problem?

ANSWER: The Marshals Service continues to seek and obtain additional detention space through the Cooperative Agreement Program (CAP), under which the Service provides funds for the renovation and construction of local jail facilities in return for guaranteed bed space for Federal prisoners. Since 1982, USMS has acquired a total of 3,694 guaranteed bed spaces nationwide under 92 CAP agreements-- 13 of which were awarded in 1988. In addition to CAP, USMS currently has in force 858 Intergovernmental Agreements -- 187 of which were awarded in 1988 -- under which USMS pays local governments a per diem covering food, lodging, medical, and other expenses for each Federal prisoner kept in their jails.

The Service has also worked within the Department of Justice to seek the expansion of Federal prisons and the construction of Federal jails in major cities. In particular, USMS has worked closely with the Bureau of Prisons in targeting areas of bed space shortages. A significant development in this regard has been the earmarking by the Department of approximately $45 million from the Assets Forfeiture Fund for construction of a 350-bed facility in Puerto Rico, which has been designed primarily to address the severely overcrowded conditions that exist among unsentenced Federal prisoners in that district.

QUESTION: Is Federal "excess property" being used in connection with the shortage of jail space?

ANSWER: Yes, it is. The Marshals Service's Federal Excess Property Program has proved to be an effective, low cost incentive for local governments to house Federal prisoners. Through the program, local jails that agree to house Federal prisoners may acquire Federal excess property to improve the conditions of confinement at virtually no cost to the jails. So far, $10.6 million of Federal excess property has been furnished to 365 contract jails throughout the country, providing everyday necessities such as medical and security equipment, inmate clothing, blankets, paint, detergent, kitchen supplies, and other needs. Some excellent examples of the success of the program include: (1) providing "walk-through" and x-ray metal detectors at 20 contract jails, thus fulfilling critical needs for additional security in prisoner handling; (2) equipping an inmate occupational training school in Harrison County Jail in the Southern District of Mississippi; and (3) furnishing extensive electrical and plumbing supplies to upgrade the Waiawa Correctional Facility in Hawaii.

Recruitment

QUESTION: What is being done to attract, recruit, and retain well-qualified Deputy Marshals?

ANSWER: The following methods are being used to recruit and retain well-qualified Deputy United States Marshals: extensive, nationwide advertising; continuous college recruiting; special testing in hard-to-hire areas; test taking assistance (written, in person, and by specially-prepared videotape) in every district; special pay rate in selected metropolitan areas; three-year deputy development program; attempts to place new recruits in locations of their choice, where there is no interference with USMS missions; and an accelerated entry level program.

QUESTION: Are there problems with retention in big city areas? Why?

ANSWER: Retention problems in large metropolitan areas result from: low pay in conjunction with a high cost of living; competition with local law enforcement agencies regarding pay, benefits, etc.; and competition with other Federal law enforcement agencies in such areas that have higher entry level salaries, one-time bonuses, and other incentives.

Assets Forfeiture Fund

QUESTION: Since the creation of the Assets Forfeiture

Fund in 1984, how much in assets has been seized? Can you give me a dollar figure?

ANSWER: The Assets Forfeiture Fund was created on October 12, 1984, and became operational after enactment of the Supplemental Appropriation Act of 1985 (P.L. 99-88) on August 15, 1985. From the inception of the Fund to January 1989, a period of just over 40 months, the estimated value of all assets seized is $1.3 billion. During the same period, $577 million in forfeited cash and forfeiture sales proceeds have been deposited to the Fund.

QUESTION: Under the asset seizure and forfeiture program, a portion of the proceeds from the forfeiture of criminal assets is shared with local law enforcement agencies. How much was shared with local agencies last year?

ANSWER: Cash disbursements to State and local law enforcement agencies, representing their "equitable share" of forfeited cash and forfeiture sales proceeds, totalled $76.7 million in FY 1988. In addition, approximately $28 million in tangible forfeited property was transferred to State and local law enforcement agencies in FY 1988.

Prisoner Transportation

QUESTION: The Marshals Service prisoner transportation system has expanded greatly in recent years, including the addition of large aircraft. Has that expansion been necessary, and is the system cost-effective?

ANSWER: Yes on both counts. In the last ten years, the number of prisoner movements conducted by the United States Marshals Service's (USMS) National Prisoner Transportation System (NPTS) has increased by an average of 12.8 percent each year, from 31,407 in 1979 to over 92,000 in 1988. This year, USMS will move over 100,000 prisoners nationwide by the coordinated air and ground network of NPTS. USMS's ability to handle the explosive growth in prisoner movements is largely due to the growth of the NPTS air wing, which now includes two Boeing 727s and a fleet of smaller aircraft, most of which were acquired at no cost through the surplus property and seized asset programs. The air wing now serves 33 cities and, once seven recently-acquired Sabreliner jets are retrofitted and deployed, air service will be available to virtually every Marshals Service district.

The USMS air transportation system has proved to be extremely cost-effective while simultaneously increasing the security of prisoner movements. In 1988, nearly 38,000 prisoners were moved by USMS airlift at a cost of $212 per move -- less than one-third the cost of commercial air. Moreover, while USMS's prisoner transportation workload has tripled since 1979, Deputy Marshal workyears expended in the program have decreased by 55 percent in the same period (from 274 in 1979 to 123 in 1988).

QUESTION: Is this strictly a Marshals Service air system, or is it utilized by other agencies as well?

ANSWER: The NPTS regularly transports prisoners for the Bureau of Prisons and the Immigration and Naturalization Service, in addition to Marshals Service prisoners. NPTS also transports military prisoners for the United States Army and Air Force from McGuire Air Force Base -- where they have been brought from Europe -- to the military detention facilities at Fort Knox, Kentucky, Fort Leavenworth, Kansas, and Fort Sill, Oklahoma. USMS is currently negotiating with the United States Navy for the movement of its prisoners to detention locations in Charleston, South Carolina, and San Diego, California.

The prisoner movements for all of these agencies are performed on a reimbursable basis.

QUESTION: Why are the costs for "local" prisoner transportation climbing at the same time the National prisoner transportation system continues to produce savings?

ANSWER: The cost for local, or "in-district," prisoner transportation increases as the number of prisoners in USMS custody, and therefore the number of in-district movements required, increases. The cost also increases as prisoners in USMS custody are housed farther from Federal court cities due to a shortage of local jail space.

Local or in-district movements are conducted in response to judicial mandates, medical treatment, etc. All movements are completed within the confines of the district's boundaries. They are also accomplished with standard means of transportation such as cars, vans, or, in the case of larger districts, small buses. As there is a limit to the number of prisoners that need to be moved in-district at one time, use of a mass-transit system is not feasible. Therefore, as the in-district prisoner movements increase, the costs will also increase at a constant rate plus inflation.

Coupled with this problem is the fact that there is a critical shortage of local jail space. Districts have been forced to transport prisoners to more distant jail locations for housing. With criminal arrests occurring at an ever increasing rate, this problem will become more acute and costly as the now limited jail space becomes even more scarce. The end result will be continued cost increases unless adequate jail facilities are obtained within reasonable distances from Federal court cities. In contrast, NPTS is national in scope. As the arrests and movements have increased, NPTS has responded by developing a faster, more secure, and less costly system for the large-scale routine movement of thousands of prisoners.

Court Security

QUESTION: I see you have requested an increase of 68 positions and $1.7 million for district-based judicial security. What is the basis for this requested increase?

ANSWER: Today, many factors are combining to increase the demand for court security, and we expect that demand to intensify as the Government continues its assault on narcotics trafficking and other serious crimes. As compared to previous years, current Federal trials involving major criminal activities such as terrorism, drug trafficking, and organized crime are more lengthy and complex; involve more defendants and multiple counts; require many more court appearances; and are generally of a higher risk level. Also, such trials are now being held at locations that are neither equipped nor staffed to handle cases requiring extraordinary security measures. In addition, as the Federal judiciary expands, new court locations are being established that must be protected by the Marshals Service.

QUESTION: How does an increase in the number of trials of drug traffickers or terrorists affect the court security activities of the Marshals Service?

ANSWER: Such trials demand the implementation of extraordinary security precautions by the Service to ensure the integrity and continuity of the judicial process. They usually require more manpower than the host district has available, so that personnel from other districts must be sent in to help -- entailing travel, overtime, and per diem costs. This is especially the case when such trials take place in smaller or less populated districts, as frequently occurs in terrorist cases, such as the Levasseur trial in Springfield, Massachusetts; the White Supremacist trial in Fort Smith, Arkansas; and the Los Macheteros trial in Hartford, Connecticut.

In addition, drug trafficking and terrorist trials frequently generate threats against judges and other trial participants, resulting in costly, around-the-clock protective details. Such trials may also necessitate the physical improvement of court facilities to ensure security, as in the case of alleged Palestinian terrorist Fawaz Younis, which required the Marshals Service to totally renovate the Federal Courthouse in the District of Columbia. That facility has since been designated the site for all international terrorist trials in the United States.

QUESTION: What role do Court Security Officers have in court security? How is this different from the role of United States Marshals?

ANSWER: Court Security Officers are responsible primarily for securing the perimeter of courtrooms and the screening of personnel in an effort to prevent unauthorized weapons or other dangerous devices from entering court facilities.

The Deputy United States Marshals are required by statute to protect and maintain the integrity of the Federal judicial system. They provide in-court protection during proceedings requiring security. Deputies are highly trained and physically prepared to exercise sound judgment and respond appropriately in both routine and emergency courtroom situations.

As a result of the recent number of high-threat trials, Deputy Marshals must take greater security measures to protect the lives of the judges, jurors, trial participants and the general public. More complex security problems are encountered as the "War on Drugs" places emphasis on the apprehension of terrorists, organized crime members, and major drug traffickers.

Drug Enforcement

QUESTION: What impact will the enforcement of the Anti-Drug Abuse Act of 1988 have on the United States Marshals Service?

ANSWER: The 1988 Drug Bill will have a significant impact on a number of United States Marshals Service (USMS) responsibilities, greatly increasing the numbers of prisoners in our custody, fugitives to be apprehended, criminal trials to be secured, seized assets to be managed, and threats against judges and other court officers whom the Service protects.

Specifically, the new and enhanced penalties for drug offenders contained in Titles 6 and 7 of the Act will result in more prisoners in USMS custody for longer periods of time, as defendants facing more severe penalties choose not to plea bargain. Additionally, the provisions of Title 6, Subtitle B, "Asset Forfeiture Amendments" will increase seized asset management workload by changing procedures related to "innocent owners" that will require certain additional procedures to be performed within 21 days of seizure. Additionally, increased resources provided DEA and the United States Attorneys to process asset forfeitures will increase the USMS asset management workload.

As a result of the additional investigative and prosecutorial resources received by the DEA, FBI and United States Attorneys, the USMS will be receiving increasing numbers of prisoners into its custody, many of whom are of a more violent nature.

In addition to heightened prisoner custody concerns, the growing number of violent individuals in the criminal justice system is increasing the number of serious threats affecting Federal judicial officers. So far in FY 1989, the number of threatening situations handled by the

Marshals Service has already surpassed that handled during the same period in FY 1988. With the additional $16 million appropriated for the USMS in the Anti-Drug Abuse Act, the Service will be more capable of maintaining its support in all of the areas discussed above.

QUESTION: What part does the Marshals Service play in drug enforcement?

ANSWER: The Marshals Service has a significant role in Federal drug enforcement efforts: in the apprehension of drug fugitives; the operation of the Witness Security Program; the management and disposal of seized drug assets; providing security for the trials of drug traffickers; and taking custody of and transporting drug-related prisoners.

In 1988, over 50 percent of the fugitives sought by Marshals Service investigators had ties -- either past or present -- to illegal drug activity. In 1989, the number of drug fugitives has risen dramatically with the transfer of all DEA fugitive cases to the Marshals Service. The drug fugitive cases transferred from the DEA represent a criminal population that has greatly increased in recent years precisely as a result of the Government's aggressive drug enforcement initiatives. Marshals Service investigators have shown a unique effectiveness in reducing the drug fugitive backlog, however, as demonstrated in the Service's two Warrant Apprehension Narcotics Team operations which targeted DEA Class 1 and 2 violators.

The Federal Witness Security Program, administered since its inception by the Marshals Service, has been and continues to be a powerful weapon in the War on Drugs. Fully 80 percent of the protected witnesses currently entering the program are providing information in drug-related cases, and there are now almost 13,000 program participants, including 5,690 witnesses and their family members.

The War on Drugs has also vastly increased the Marshals Service's responsibilities for the management and disposal of seized criminal assets under the National Asset Seizure and Forfeiture (NASAF) program. USMS currently has custody of more than 19,000 seized properties having a value of over $800 million. The NASAF program maximizes the Government's ability to disrupt drug trafficking by confiscating illegal proceeds and using them to further drug law enforcement efforts.

The increased Federal prosecution of drug traffickers is multiplying the number of trials that require the implementation of extraordinary security precautions; by 1990, three-fifths of the criminal proceedings requiring Marshals Service security will be drug-related. Such trials routinely involve multiple, highly dangerous defendants and generate serious threats against court officers.

The Service takes custody of about 85,000 Federal prisoners annually, over half of whom are drug-related offenders. These prisoners generally are more dangerous and require longer pretrial detention and more court appearances than other prisoners -- all of which make extreme demands on Marshals Service resources for prisoner handling, transportation, and security.

Federal Prison System

Incarceration of Anne Pollard

QUESTION: Last month I was contacted by Rabbi Yellin of the Synagogue Council of America regarding the incarceration of Mrs. Anne Pollard. There seems to be concern that her state of health is deteriorating rapidly.

What steps have you taken to ensure that adequate medical treatment is being given to Mrs. Pollard?

ANSWER: Anne Pollard received a five-year sentence for conspiracy to Receive United States Government Property and Association after the Fact to Possession of National Defense Documents.

Mrs. Pollard was initially placed at the Federal Correctional Institution, Lexington, Kentucky, which serves as the medical center for female Federal prisoners. While at Lexington, she had extensive evaluations for her medical complaints. Consultants involved in her care included a gastroenterologist, gynecologist, neurologist, optometrist, and a dietician. In addition to examinations provided by consultants, Mrs. Pollard was extensively evaluated by the medical staff at Lexington.

On May 9, 1988, Mrs. Pollard was transferred to the Federal Medical Center (FMC), Rochester, Minnesota, for additional studies where she was evaluated by several consultants from the Mayo Clinic, including a gastroenterologist, gynecologist, hematologist and neurologist. Mrs. Pollard was also seen on a daily basis by the medical staff at Rochester.

On September 30, 1988, Mrs. Pollard's medical condition had improved sufficiently to allow her to be transferred to the Federal Prison Camp, Danbury, Connecticut. This decision received the concurrence of Mrs. Pollard's attorneys and personal physicians. While at Danbury, Mrs. Pollard became dehydrated as the result of not eating for several days. She required intravenous rehydration and was admitted to Danbury General Hospital. Knowledgeable medical staff determined Mrs. Pollard's conditioned warranted closer medical monitoring than the assets available at Danbury could provide. Accordingly, upon completion of treatment at Danbury General Hospital she was transferred to the Federal Medical Center (FMC), Rochester, Minnesota on January 14, 1989.

Since Mrs. Pollard was returned to FMC, Rochester, she has been under continuing evaluation and treatment by Bureau of Prisons Medical Staff. She allowed herself to be weighed recently. Her intake of food and fluids continues to fluctuate. Mrs. Pollard has always received, and is currently offered, excellent quality medical care. It is our desire that Mrs. Pollard's medical condition become stabilized and regulated. Mrs. Pollard's full cooperation is, and will continue to be, a key factor in the speed with which we can achieve this goal. A Petition for Writ of Habeas Corpus was filed on Mrs. Pollard's behalf on January 23, 1989, in the United States District Court, District of Minnesota. This Petition asserted constitutional violations by Bureau of Prison's staff related to Mrs. Pollard's transfer to FMC, Rochester, and medical treatment provided to her during her incarceration. Subsequent to an evidentiary hearing, United States Magistrate Janice M. Symchych issued a Report and Recommendation in full support of the treatment regimen afforded Mrs. Pollard at FMC, Rochester, stating she has undergone all known and state-of-the-art diagnostic tests.

QUESTION: Is she being treated in a prison facility or a local hospital?

ANSWER: Mrs. Pollard is currently being treated at the Federal Medical Center, Rochester, Minnesota. Rochester is one of six medical referral centers operated by the Bureau of Prisons. It provides a full range of diagnostic and therapeutic services for inmates needing ambulatory or inpatient health care services. Rochester operates as an acute medical/surgical and psychiatric referral center and enjoys a close working relationship with the Mayo Clinic.

QUESTION: What is your comment on her request for a medical furlough?

ANSWER: A medical furlough will be considered only when institution medical staff are of the opinion that the inmate's medical needs cannot be adequately addressed within the resources available to the Bureau of Prisons. Mrs. Pollard's medical needs can be adequately addressed by staff at FMC, Rochester. Accordingly, no medical furlough is currently under consideration.

Federal Surplus Property

QUESTION: Over the last five years how much surplus Federal land and facilities have been utilized for additional Federal prison space?

ANSWER: Within the last five years, the Bureau has established, or is in the process of establishing, eight Federal prison facilities on surplus Federal land/ facilities including:

- Metropolitan Correctional Center, Los Angeles, CA. (opened in 1988)

- Federal Correctional Institution, Three Rivers, TX. (under construction, scheduled to open in 1990)
- Federal Correctional Institution, Phoenix, AZ. (opened in 1985)
- Federal Prison Camp, Duluth, MN. (former Air Force Base converted in 1983)
- Federal Prison Camp, Pensacola, FL. (located on active United States Naval Base in 1988)
- Federal Prison Camp, Panama City, FL. (located on active Air Force Base in 1988)
- Federal Prison Camp, Homestead, FL. (located on active Air Force Base in 1988)
- Proposed Metropolitan Detention Center, Guaynabo, San Juan, Puerto Rico. (formerly a part of United States Army Base, Fort Buchanan, acquired in 1985).

QUESTION: I understand that a recent provision allows the Department of Defense to retain the receipts after the sale of surplus Federal facilities for their use in building new defense facilities. Has that dried up prisons access to such facilities?

ANSWER: No, the Bureau of Prisons fully intends to continue to work with DOD to identify sites suitable for correctional use whether they are contained in the base closure act or others. Additionally, the National Defense Authorization Act, 1989 (P.L. 100-456 September 29, 1988) established a Commission on Alternative Utilization of Military Facilities and the Director of the Bureau of Prisons is included as a member.

Over the years, the Bureau of Prisons has worked closely with the Office of Economic Adjustment of the Office of the Secretary of Defense. Through their joint efforts, the Federal Prison Camp at Big Spring, TX., and Federal Prison Camp at Duluth, MN were established on former Air Force bases. It is anticipated that this close working relationship will continue in the future.

Prison Size

QUESTION: As I understand it, the Bureau's policy has been to build prisons with a capacity to house 500 to 550 prisoners and to include with each prison a satellite camp housing another 150 to 250 prisoners. The capacities are consistent with the National Standards that exist in the corrections area. Your request includes the construction of two Federal correctional "complexes" designed to hold roughly 2,000 inmates each.

Would building larger prisons reduce system costs?

ANSWER: Under the Correctional "Complex" approach, several separate correctional facilities of different security levels, for example, a maximum security United States Penitentiary (550 beds), a medium security Federal Correctional Institution (910 beds) and a minimum security Federal Camp (500 beds), would be constructed at one site. The design capacity of the medium security facility will be increased from the current level of approximately 500 to a capacity of over 900. This will be accomplished by modestly increasing the cell size and initially designing two-thirds of the prison cells for two inmates each. The Bureau of Prisons continues to believe that the design standard for maximum security prisons should be a single inmate in a single cell. We believe this new site and design approach will help reduce prison construction costs as well as future operating expenses.

QUESTION: What are the pros and cons of building and operating larger prisons?

ANSWER: Besides cost savings, we should be able to bring more beds on-line in a shorter period of time since one site will replace three. These new facilities will present some new challenges for management. Groups of intrinsically different inmates must be properly classified and appropriately separated into different compounds within the complex.

QUESTION: Is there less control over prisoners and possible increased risks?

ANSWER: We plan that the facilities will have sufficient resources to handle the larger population and proper security, taking advantage of the latest security technology, will be designed into the facility. The Bureau's experience over the past several years in working with medium security institutions with increased populations indicates that these populations can be managed safely and humanely, when applying good management techniques by well trained and qualified staff.

Privatization

QUESTION: Last year, I heard quite a bit about the need to "lease" Federal correctional facilities. This subcommittee denied the Bureau the authority to do so yet sees the same request in the 1990 budget submission before us now. What do you see as the pros and cons of leasing prisons?

ANSWER: Under the leasing program proposed, prisons would be financed and constructed with private resources and leased to the Bureau of Prisons on an annual basis. Therefore, the cost of the facility would be spread out over its useful life rather than in one fiscal year. The facilities would be staffed and managed by the Bureau of Prisons, no change from the current practice.

QUESTION: How does the cost of leasing compare to the cost of constructing a facility? What about long-term cost?

ANSWER: A program of leasing prisons from the private sector combined with direct Federal appropriations for construction can substantially reduce the outlays required in the Bureau of Prisons' expansion program over the next few years. This approach also supports the twin goals of increasing prison capacity and working toward deficit reduction within the time frames of Gramm-Rudman-Hollings. While there are variations in leasing approaches, the Bureau's current plan is to use a site adapted design for each of the two facilities. A prospectus would be made public requesting proposals for furnishing financing and construction services. The successful bidder would complete construction of the facility with his/her own resources and lease the facility to the Bureau on an annual basis. The Bureau would staff and manage the facility.

We understand that lease agreements similar to the ones we propose generally result in an increase in cost of approximately ten percent over an annual lease period of twenty years. Under certain favorable financial market conditions, the lease cost potentially could be lower. The actual cost differential would not be known until proposals are received by the Government.

QUESTION: What other forms of privatization exist in the corrections area and what evidence exists as to their feasibility and their likelihood of reducing prison system costs?

ANSWER: The Federal Bureau of Prisons continues to contract for a wide variety of services involving virtually every program and functional area. These include contracts for specialized medical and mental health services; chaplaincy services; maintenance and repair of plant; new facilities construction; detention and halfway house services; specialized training activities; education and vocational training activities; and selected research studies.

The 1990 budget proposes an additional privatization initiative which we believe is in line with this Committee's views on the utilization of private sector detention firms for "specialized" inmate populations. Specifically, we propose to contract with a private sector firm to construct, staff and manage a minimum security facility to house 250 sentenced short-term aliens.

Closed Military Bases

QUESTION: As a result of the recent base closure legislation, several military bases will be deactivated over the next few years. President Bush has indicated that one of his priorities would be to close unneeded

domestic military bases and convert them into minimum security prisons for use by States.

Will the Bureau be allowed to use the closed bases for Federal prisoners as well?

ANSWER: At the present time, wording in the legislation does not specifically include the Federal Bureau of Prisons. The Bureau certainly would want to be included if closed bases are made available for correctional use.

QUESTION: Is the Bureau actively seeking access to these facilities?

ANSWER: Yes, the Bureau of Prisons has reviewed the list of bases recommended for closure and identified 22 locations for further study. As mentioned earlier, the Director of the Federal Bureau of Prisons is a member of the Commission on the Alternative Utilization of Military Facilities and will work with that Commission to acquire space on those 22 locations identified. Additionally, when GSA identifies surplus property, a provision in Title 40 of the United States Code authorizes the Attorney General to determine that such surplus real and related personal property is required for correctional use.

QUESTION: Are the bases suitable for higher security prisoners? If not, why not?

ANSWER: Existing facilities on each base would have to be reviewed on a case-by-case basis to determine suitability for housing higher security inmates. It is doubtful that existing structures would meet Bureau of Prisons requirements for medium or maximum security inmates. In those cases, if land were available, new construction would be considered.

QUESTION: How many prisoners could you house on a closed military base?

ANSWER: This would depend on the size and condition of the base and would have to be determined on a case-by-case basis. If new medium or maximum security facilities would have to be constructed, Bureau of Prisons' requirements for a new facility to house 600 medium security inmates would be a minimum of 250 acres of land. Such a facility with a satellite camp to house 250 minimum security inmates would utilize roughly 30 percent or 60 of the 250 acres with the remainder needed for security zones.

Inmate Financial Responsibility

QUESTION: I understand the Bureau of Prisons has established an Inmate Financial Responsibility program which allows inmates to meet their financial obligations for court-ordered restitutions, special assessments, fines and court costs, and other debt owed the Government. How

does the program work? Has it been successful? How much have we collected through its use?

ANSWER: In order for inmates, who have the resources, to meet their financial obligations for court-ordered restitutions, special assessments, fines and court costs, and other debt owed to the Government, the Bureau of Prisons established the Inmate Financial Responsibility programs in 1987. The inmates participation in the program is one of the factors considered when determining security/custody classification level, eligibility for community activities, housing assignments, and other privileges. The program has been quite successful. During 1988, we collected over $9.5 million in fines, restitutions, assessments, and other debts owed to the Government. Presently, there are over 15,600 inmates participating in the program, and approximately 11,200 inmates have completed payment of their assessments/fines.

Active Military Bases

QUESTION: I have been told that your minimum security prison camps on active military bases are very cost effective. Have you made any progress in locating camps on additional bases?

ANSWER: There has been recent increased receptivity in the Department of Defense to the concept of establishing Federal Prison Camps on active military bases. We have or are establishing camps at Tyndall Air Force Base, Saufley Field and Homestead Air Force Base in Florida and Seymour Johnson Air Force Base in North Carolina.

QUESTION: An agreement between the Bureau and the Department of Defense was all set relative to the opening of a camp at Myrtle Beach Air Force Base. What was the reason for the cancellation of these plans? The community supported it, did they not?

ANSWER: While there was community support for the Federal Prison Camp, the location of potential housing for inmates on the base was inappropriately situated and options at other bases were better.

Furloughs

QUESTION: There was considerable publicity during the Presidential election campaign over the use of prison furloughs and the dangers prisoners on furlough may pose to the public. Data provided by the Bureau indicates a rate of 3.3 prisoner escapes for every 1,000 Federal prisoners furloughed during 1987.

Has the Bureau made any changes in the criteria used to determine eligibility for furloughs or any other aspects of the Federal furlough program because of this publicity?

ANSWER: The Bureau of Prisons has made no changes in the criteria used to determine eligibility for furloughs as a result of the publicity during the Presidential elections campaign. Under the existing program, an inmate must be within two years of a firm release date, must have community custody (the lowest custody classification level), and must have demonstrated responsibility and good institution adjustment. We will continue to closely monitor the furlough program as we have since its inception to assure public safety.

QUESTION: What was the furlough escape rate for 1988?

ANSWER: During 1988, there were 14,584 furloughs with 43 escapes. Thus, the overall furlough escape rate was 2.9 per thousand.

QUESTION: Were any citizens physically harmed by these escapes?

ANSWER: We are not aware of any citizen being physically harmed by these escapes. Apprehension of Federal escapees is the responsibility of the United States Marshals Service, and data are maintained on these apprehensions. However, the Service does not maintain information on further crimes committed by the fugitives.

QUESTION: How does the Bureau's furlough escape rate compare to the rates experienced by State prison systems? (I know in my own State of South Carolina, we have had only 20 escapees out of 23,727 furloughs granted during the last 21 years.)

ANSWER: In August 1988, Contact, Inc. completed a State-by-State survey of State furlough and temporary release programs including the number of furloughs successfully completed. The rate of successful completion ranges from 60 percent to 100 percent. The Bureau of Prisons' overall rate of 99.7 percent compares favorably with these figures.

Illegal Drug Use in Prisons

QUESTION: Please outline the procedures used to test prisoners for illegal drug use.

ANSWER: The urinalysis program in the Bureau of Prisons is one of the primary methods of detection and deterrence of illicit drug use in our institutions. Authorized by 8 CFR 550.30, the program was initiated in 1977, and current procedures are described in a comprehensive program statement.

The current program provides for testing:

a. At least 50 percent of all inmates involved in community programs each month,

b. 100 percent of those inmates suspected by staff of using illicit drugs. (This includes those found in possession of drugs, those who have previously tested positive for drug use, and those identified as members of disruptive prison gangs),

c. At least 5 percent of the general inmate population each month. These inmates are randomly identified by a computer generated sample.

In addition, "saturation testing" is frequently used in a selected work or living area or for those inmates involved in a particular activity. This provides for testing all inmates in the identified area or activity. Any inmate may be included in one or more of the identified testing groups during any given month, and a positive test result will result in placement of an inmate in the high risk group identified in (b) above for at least eighteen months. Thus, an inmate could conceivably be tested as many as four times in any given month.

The urine testing is conducted throughout each month, without notice to the inmate of upcoming testing. Thus, inmates cannot rely on testing on any particular days or at any particular time of the month.

The urinalyses conducted include tests for:

a. Morphine
b. Methadone metabolite
c. Codeine
d. Other opiates
e. Barbiturates
f. Amphetamines
g. Cocaine
h. Cocaine metabolite
i. Phencyclidine (PCP)
j. THC (Marijuana)

QUESTION: Over the last three fiscal years, how many prisoners have been tested, and how many tested positively for illegal drug use?

ANSWER: The following table identifies the total number of inmates tested and the number who tested positively for unauthorized drug use in FY 1986, 1987, and 1988.

	1986	1987	1988
Community Activities			
Number Tested	9,191	8,828	9,072
Number Positive	151	116	83
Percent Positive	1.64%	1.31%	.92%
Random Testing			
Number Tested	23,725	26,787	28,529
Number Positive	728	634	684
Percent Positive	3.07%	2.37%	2.4%

	1986	1987	1988
Suspected Users			
Number Tested	19,818	25,541	26,108
Number Positive	1,467	1,531	1,409
Percent Positive	7.40%	5.99%	5.40%
Total			
Number Tested	52,734	61,156	63,709
Number Positive	2,346	2,281	2,176
Percent Positive	4.45%	3.73%	3.42%

In reviewing the above figures, the most accurate indication of general illicit drug use is from the "Random Testing" data. This is based on the sampling method used for each of the groups identified. The Community Activities group includes only those inmates returning from community activities; the Random Testing group is a true computer generated random sample; the Suspected Users group includes only those inmates who have a recent history of drug use, disruptive gang affiliation, or are suspected by staff of using drugs.

QUESTION: When a prisoner either tests positively, or is found to have illegal drugs in his possession, what happens next? For instance, what investigation is made to find out the source of the drugs? Have those investigations determined that the source was guards or other Bureau of Prisons personnel, and if so, what has happened to those supplying drugs to prisoners?

ANSWER: When a prisoner tests positively for drugs or is found in possession of drugs not authorized, he is subject to the provisions of the Inmate Discipline program. Under these procedures, the inmate is charged with committing a prohibited act, a full investigation follows, including attempts to identify the source of the illicit drugs. The inmate has a hearing before the Disciplinary Hearing Officer, and if found guilty, is subject to any one or more of the following sanctions:

a. Recommend parole date rescission or retardation,
b. Forfeit earned statutory good time and/or terminate or disallow extra good time,
c. Recommend disciplinary transfer to another institution,
d. Placement in disciplinary segregation,
e. Withholding of statutory good time,
f. Loss of privileges (e.g., commissary, movies, recreation)
g. Change in housing assignment,
h. Removal from program and/or group activity,
i. Loss of job,
j. Restriction to quarters.

In the event of a repeat offense, an inmate is subject to more stringent sanctions. Investigations of the introduction of illicit drugs into a correctional facility are conducted by both staff of the Bureau of Prisons and the

Federal Bureau of Investigation. Rarely is a staff member involved in the introduction of illicit drugs into an institution. When this is the case, employment of that staff member is terminated, and the incident is referred to the FBI for investigation and possible prosecution. Current investigative techniques include monitoring of telephone calls, mail, and financial transactions of inmates. These procedures have been highly productive in discovering attempts to introduce illicit drugs, and have resulted in numerous referrals for prosecution of both inmates and their contacts in the community.

QUESTIONS SUBMITTED BY SENATOR DANIEL K. INOUYE

Immigration and Naturalization Service

Immigration User Fee

QUESTION: Under the user fee program the Immigration and Naturalization Service (INS) collects a five dollar user fee from each arriving international passenger - both foreign and returning Americans. INS is required to use the funds to recruit, hire, process security clearances and train an inspection force that is capable of efficiently processing international arrivals at American gateways.

What is the total revenue that the INS has collected Service-wide since the inception of the User Fee (IUF) program?

ANSWER: Since the inception of the Immigration User Fee Program on December 1, 1986, the Service has collected $180.5 million. The breakdown is as follows:

Fiscal Year	Collections (millions)	Time Period
1987	$62.0	10 months
1988	95.3	12 months
1989	23.2	3 months
	$180.5	

QUESTION: How has this money been spent?

ANSWER: This money in percentages, was spent as follows:

	Fiscal Year		
	1987	1988	1989 (planned)
Inspections	66%	68%	63%
Detention & Deportation	9%	11%	12%
Non-Immigrant Systems	23%	16%	17%
Enforcement, Administration and Debt Collection	2%	5%	8%
	100%	100%	100%

QUESTION: What percentage is actually used to fund the staff that inspect arriving passengers?

ANSWER: In 1987, 66 percent of IUF funds obligated were utilized by the Inspections program. In 1988, Inspections utilized 68 percent. Plans for 1989 call for Inspections to utilize 63 percent of IUF funds.

QUESTION: What portion of the total amount collected has come from operations at Honolulu International Airport (HIA)?

ANSWER: This information is not readily available. INS tracks receipts of funds by carrier and not by destination.

QUESTION: What percentage of the total is used to fund inspectors at HIA?

ANSWER: INS User Fee funding dedicated to staffing HIA amounts to approximately $3 million or five percent of the total amount utilized by the Inspections program. It is important to note that while the User Fee is collected from a certain segment of the travelling public, the statute directs INS to use these resources at all airports and seaports.

QUESTION: The recruiting, hiring and security clearance process is extremely lengthy. What is INS doing to expedite this process? Is INS considering maintaining a "pool" of potential inspectors that can be hired as the positions become available?

ANSWER: INS's Western Regional Office has, over the last one and one-half years, moved ahead with an aggressive recruiting and hiring program. At the beginning of 1988, INS initiated the following: a local Inspections recruiting team, a cooperative education program, advertising in National College Placement Association publications, creation of a permanent training officer position at Honolulu International Airport, and doubling the inspections Staff at Honolulu.

QUESTION: How does the Western Region of INS, which traditionally lags behind the other three regions in filling vacancies, plan to increase its efficiency in recruitment, security clearance and training?

ANSWER: As a result of the initiatives described in the previous paragraph, the Inspections program in Honolulu has increased its staffing to 87 positions from 22 positions prior to the implementation of the User Fee. In addition, the Honolulu office now has 13 cooperative education students working as Immigration Officers. These "Co-Op" students, upon graduation, can be immediately placed into permanent full-time positions without regard to normal hiring procedures. Recruitment efforts have been so successful that, after filling all our vacant positions in Honolulu, there are still 400 applicants whose applications are being held as a hiring pool for future positions vacancies.

QUESTION: What other INS support services are funded by the user fee?

ANSWER: INS services funded by the User Fee are:

- Inspections
- Detention and Deportation
- Non-Immigrant Systems: Data and Communications
- Enforcement, Administration and Debt Collection:
  - Investigations
  - Anti-Smuggling
  - Refugees and Overseas
  - Training
  - Intelligence
  - Construction and Engineering
  - Legal Proceedings
  - Executive Direction and Control
  - Administrative Services

INS Coordination with Customs Service

QUESTION: In Hawaii, INS and Customs appear to work well together. However, on the policy level in Washington, the two services appear to be moving further apart. Several cooperative efforts, such as sharing a computer data bank, have failed. INS and Customs are involved in territorial disputes that reduce service and duplicate procedures for the public.

INS is sensitive to any suggestion that would place a portion of their responsibility with another Federal agency. For example, Customs currently inspects the passports of returning Americans under the citizen bypass program. This program was started about ten years ago when INS was not adequately staffed to handle all international arrivals. Customs believes that it has been doing a good job but INS does not agree. INS is anxious to take back the responsibility of checking returning Americans.

Both INS and Customs are trying to reach their goal of 100-percent screening of each arriving passenger. This means that traveling Americans will queue up twice for passport inspection -- once with Immigration and again with Customs.

Hiring a primary force of Federal inspectors to conduct both the primary Immigration and Customs check would benefit the public. Each service would still train their own inspectors to carry out secondary inspection.

What is the status of the joint computer data project?

ANSWER: INS and Customs have agreed upon an implementation plan for establishing a joint border security system.

This system has tentatively been named the Inter-agency Border Inspection System (IBIS). A steering committee of high-level management from both agencies has been formed to provide policy direction for IBIS. Working groups are being formed to define requirements, develop specifications, and provide technical guidance. These working groups are expected to be fully operational by April 1989. INS and Customs have also discussed ways to streamline procedures so that the system is queried only once during primary inspection.

QUESTION: How are INS and Customs working together on the readable passport program?

ANSWER: The Machine Readable Document (MRD) Border Security Program, mandated by the Anti-Drug Abuse Act of 1988, has become part of the joint computer data project. INS and Customs are in the process of identifying MRD equipment needs and availability. Existing MRD equipment is scheduled to be upgraded to read all types of machine-readable documents including passports, visas, "green cards", border crossing cards and pilots' licenses. Additional MRD equipment will be ordered to fill needs not met by redistribution of existing equipment. INS and Customs are coordinating with the State Department to insure that the order of MRD automation of the ports-of-entry coincides with the State Department's plans to begin issuing machine-readable visas at its foreign posts.

QUESTION: What services is INS implementing to better serve the traveling public?

ANSWER: Innovations in computer technology including, but not limited to, machine readers will reduce the processing time for arriving flights. These readers can verify document validity while at the same time query the lookout data bases of INS, Customs, and the Department of State. Long-term planning calls for a paperless arrival/departure system within five years. This system will provide for the automated exchange of data between ports-of-entry and mainframe data bases, eliminating the need for I-94 arrival/departure documents.

QUESTION: Is 100-percent screening a realistic or necessary goal when the rejection rate at certain airports is so low?

ANSWER: The 100-percent screening of arriving passengers is a statutory requirement under the Immigration and Nationality Act; the Act mandates inspection of all alien and citizen applicants for admission.

QUESTION: Why is INS pursuing 100-percent screening and the termination of the citizen bypass program at a time when the agency is looking for better ways to facilitate processing? Is this a conflict in objectives?

ANSWER: One hundred-percent screening, elimination of citizen bypass and elimination of joint primary inspections by INS and Customs at airports is part of Customs and INS planning for reconfiguration of passenger processing at airports of entry consistent with the Customs master port plan for the 1990's. INS plans to eliminate bypass due primarily to low rates of detection of false claims to United States citizenship and use of fraudulent documents at locations using bypass.

QUESTION: Will INS consider an inspection team trained to complete primary inspection for both agencies?

ANSWER: The "two-stop" configuration has, over many years of operation, proven most effective in allowing our officers to properly inspect applicants for admission and to fully facilitate the processing of visitors to the United States. However, the Department is not averse to exploring other methods of processing individuals entering the United States.

QUESTION: Customs was mandated to meet standards adopted by Congress in 1989, "to establish 45 minutes as the maximum Federal inspection time standard for any arriving passenger. The 45-minute maximum should be measured from the first aircraft door being opened to the time the passenger has cleared all Federal inspection formalities."

INS is not mentioned in this mandate. However, since INS is part of the entire process it appears that INS must work with Customs to meet this 45-minute mandate. INS in Honolulu is using a self-imposed mandate of one hour from plane to curbside.

What innovative operational procedures for more efficient use of manpower is INS developing or implementing to help Customs comply with the 45-minute maximum Federal inspection time?

ANSWER: In 1987, INS began a machine readable document pilot program that automatically queried a lookout data base. This automation of a necessary step in the inspections process allows Immigration Inspectors to concentrate on and shorten the inspectional interview. Further, automation efforts, especially in cooperation with Customs, continue to make the inspection process more efficient.

Furthermore, INS continues to strive for efficient facility designs to maximize the effectiveness of the onsite workforce. INS intends to conduct a time-motion study to determine the most efficient deployment and physical layout of the Inspections staff.

QUESTION: What other programs would help INS meet the 45-minute mandate?

ANSWER: INS pre-inspection in several key foreign hubs such as London, Frankfurt and Tokyo would facilitate travel and dramatically reduce Stateside Federal Inspection Service processing time. In addition, voluntary industry efforts to reduce peaking through better scheduling and to expedite quick baggage delivery will help reduce processing time.

QUESTION: Please provide me with a breakdown of international arrival processing rates and passenger counts for the last five years.

ANSWER: International arrival processing rates and passenger counts for the last five years are as follows:

Year	Total Number of Passengers	Number of Inspections per workhour at airports
1988	40,642,316	37
1987	37,990,345	39
1986	35,635,567	34
1985	35,819,775	28
1984	33,778,387	25

The number of inspections per workhour is calculated by dividing the number of passengers inspected by the number of primary inspection hours reported.

Staffing

QUESTION: How does INS monitor its inspectors to determine the level of service given to non-citizens and returning Americans?

ANSWER: INS utilizes a formal review and appraisal process for inspectors that employs a written performance work plan. Reviews and counselling sessions are conducted as often as necessary, but no less than twice a year, to ensure all officers are performing at a satisfactory level or, if not, that they receive the training or action necessary to improve that performance until an acceptable level is achieved.

In addition, INS monitors complaints from the public as well as monthly statistics to identify potential or actual problem areas or ports.

QUESTION: What is INS doing to update the training of their staff and reinforce the need to treat all arriving passengers in a professional and courteous manner?

ANSWER: Since 1977, INS has increased the basic training hours in human relations from 19 to 23, and in its advanced journeyman inspector course from 4 to 10. Instructors trained in behavioral analysis, psychology and cross cultural relations bring the benefit of that expertise to the INS classroom. These courses are constantly reviewed and updated to remain timely and effective.

In Honolulu, INS has established performance standards which target processing times, courtesy, and the quality of the inspection. Daily logs are maintained that track the times of primary and secondary aircraft processing.

A training officer position has been filled and at other ports similar action has been taken. Courtesy is a constant part of the ongoing training and daily emphasis is placed on courtesy.

QUESTION: In Hawaii, visitors arriving on extra sections are essential to the economic health of the State's economy. The State of Hawaii Department of Taxation estimates that the State's revenue would be affected by as much as 20 percent if the extra sections were not used. How has INS factored in the traffic from the extra sections to insure adequate staffing levels at HIA?

ANSWER: Past staffing requests have been based upon staffing every available primary line and secondary position during the peak periods. This includes the current 24 primaries and the 34 provided for under the renovation. These requests took into account the need for additional staffing during off-peak periods. The requests were based upon past flights and known increases during the off-peak period. Otherwise, only the capacity of the HIA physical plant limits staffing requests. During the last extra-section peak period, officer schedules were changed to provide the maximum numbers of inspectors.

Citizen Bypass

QUESTION: Currently, under the citizen bypass program, only arriving aliens are processed by INS inspectors. Returning United States citizens proceed directly to Customs. INS plans to discontinue the citizen bypass program at HIA as soon as the allocated INS positions are filled.

What is the status of this plan to discontinue the citizen bypass at HIA?

ANSWER: INS plans to eliminate United States citizen bypass processing at the five airports currently using a bypass configuration. At this time, each of these airports has been tasked with providing INS Central Office with an action plan and estimates of resource requirements for elimination of bypass. No action will be taken until these plans have been submitted and reviewed by the end of March, 1989.

At Honolulu, with current expansion from 24 to 34 inspection booths and full automation, including document readers, the inspection of United States citizens can be implemented without adverse impact on passenger flow.

QUESTION: If the citizen bypass program is eliminated, how will INS assist Customs in meeting the 45-minute passenger processing mandate?

ANSWER: The proposal to eliminate citizen bypass is consistent with current INS/Customs planning for airport inspectional reconfiguration. These plans call for a comprehensive screening of arriving passengers by INS with Customs employing rovers, analytical techniques and profiles, and "red door/green door" processing to perform its inspectional mission. This reconfiguration is designed to speed passenger processing to meet set guidelines and reduce overall passenger processing time.

QUESTION: Has INS taken the total number of passengers from extra sections into account in reviewing the feasibility of eliminating the citizen bypass program at HIA?

ANSWER: All local conditions bearing on passenger processing at the affected airports will be taken into account in the action plans prepared by the district offices.

QUESTION: Assuming the peaking situation at HIA continues, how will INS reduce waiting time if it eliminates the citizen bypass program?

ANSWER: The facilitative effect of the INS/Customs reconfiguration of airport processing will minimize the problems caused by peaking.

QUESTION: Why has INS allowed New York to continue its citizen bypass program indefinitely?

ANSWER: Kennedy International Airport in New York City poses unique problems for elimination of bypass in that, despite full staffing, the physical plant does not lend itself to the addition of more inspection lines. However, the New York District has been tasked with formulating a plan, including possible facility modifications and staff increases, to resume inspection of arriving United States citizens.

QUESTION: How successful is Miami's modified citizen bypass program?

ANSWER: Miami's modified citizen bypass has yielded enforcement results and has been effective in expediting passenger entry. However, it is not as effective a screening mechanism as a comprehensive check. In any case, passenger processing at Miami will be reconfigured by the Summer of 1989 according to the new INS/Customs plan, under which a comprehensive check will be conducted by INS.

QUESTION: Why did INS discontinue the citizen bypass program at the Los Angeles International Airport (LAX)?

ANSWER: The citizen bypass program at LAX was discontinued as part of an INS/Customs predecessor program similar to the current planned configuration.

QUESTION: What effect has the termination of the bypass program at LAX had on the traffic flow?

ANSWER: With increased staff, which was required in any case, and through the use of document reader technology, satisfactory processing times have been maintained.

Visa Waiver

QUESTION: Japan and the United States started the visa waiver pilot program in December 1988. In January, 54 percent of all arriving Japanese at HIA took advantage of the program. With the successful introduction of the visa waiver program in Hawaii, do you expect it to become a permanent program?

ANSWER: A decision to make the Japanese visa waiver program permanent will depend on the success of the pilot program. Two important considerations will be the program's overall public acceptance and its fraud rate. Even if these considerations are met, the visa waiver program can only become permanent through legislation.

QUESTION: What other countries will be targeted for the visa waiver program?

ANSWER: The Secretary of State has proposed additional visa waiver participants from western Europe. This proposal is under review at the Department of Justice, and information on the participants will be available within a few weeks.

QUESTION: How many additional inspectors will be needed at HIA if the pilot program became permanent?

ANSWER: As many as 35 additional inspectors could be needed if the visa waiver program becomes permanent. Staffing will be determined by the size of the facility and the volume of passenger traffic.

Pre-Inspection Program

QUESTION: The pre-inspection program involves inspection of travel documents prior to boarding a flight. Currently, the pre-inspection program is underway in the Caribbean and in the United Kingdom.

What progress has INS made to establish pre-inspection in an Asian or Pacific location?

ANSWER: We are committed to the expansion of the pre-inspection program as a means to increase facilitation of tourist traffic to the United States and relieve congestion at overburdened Stateside airports. To that end, INS has been actively pursuing the establishment of a pre-inspection site in Japan for the past two years.

Meetings have been held with INS headquarters officials and the Governor of Hawaii and members of his staff, as well as with managers of foreign and United States flag carriers which service the Pacific Basin. Reaction to the concept of pre-inspection by this group has been, in general, positive particularly in light of the recently implemented visa waiver pilot program for Japanese citizens.

However, the American Ambassador and the Government of Japan have expressed serious concerns regarding pre-inspection in Japan. The Ambassador has been, and continues to be, staunchly opposed to any increase of outside agency United States personnel in Japan. He quotes current Department of State security regulations regarding the increase of United States presence abroad as well as the administrative and financial burden the addition of INS personnel would place on United States Government resources as the rationale for his opposition.

The Government of Japan is sensitive to the possibility that it could not fulfill the contractual obligations of a pre-inspection agreement as they relate to the issues of sovereignty and the granting of limited privileges and immunities for pre-inspection personnel. In addition, the Government has cited the physical impossibility of accommodating a United States pre-inspection area at Narita Airport without extensive modification to that facility.

INS shares some of these concerns. Due to the extremely high cost of living in Japan, the expenditures on housing and schooling allowances for INS personnel and dependents posted in that country would be relatively high and could result in a drain of INS User Fee resources. The overcrowded conditions at Narita Airport do not lend themselves to the inclusion of a United States Federal inspection area.

However, INS remains flexible and is committed to innovation in tailoring pre-inspection to accommodate the needs of the individual host country. In this regard, INS has suggested the possibility of operating pre-inspection out of the Osaka Airport, which is less congested and more adaptable. INS has also offered to fund, through a Foreign Administrative Assistance Support agreement with the Embassy, any administrative expenses which would result from required support of additional personnel.

To date, although enthusiasm for the program has not waned, little progress has been made. Previous efforts by INS to establish a pre-inspection program in Hong Kong proved unsuccessful. Approximately two years ago, INS took a senior Hong Kong Government representative on a tour of existing preclearance sites in Canada and Bermuda.

Discussions were held with local government personnel in those countries as well as with local airline representatives and police officials. Though these discussions were positive in terms of apprising the Hong Kong officials of the value of the program, domestic political considerations in Hong Kong have precluded INS's ability to establish a pre-inspection site in that country.

QUESTION: What are your suggestions as to what Congress can do to implement this program, on a test basis, between Japan and Hawaii?

ANSWER: Informal discussions with the Government of Japan must be elevated to the state-to-state level.

Regional Direct Mail Program

QUESTION: On April 1, 1988, the INS implemented its regional direct mail program. All petitions/applications for the Western Region are being sent to the Western Service Center in San Ysidro, California. Since the inception of the program, I have received numerous complaints from constituents whose petitions were filed over six months ago, but have not yet received approval notices from the INS.

I understand the processing center is unable to locate these petitions/applications due to the large number of petitions received by the center. In most cases, petitioners neither receive any acknowledgement from the INS nor do they receive their original documents back from the center. This creates an undue burden for many petitioners who must obtain a second set of original documents for resubmission to the INS.

What efforts are being made to improve the current system of processing petitions/applications at the Western Service Center?

ANSWER: The current problems at our Western Regional Service Center are due to the impending move of the operation from San Ysidro to Laguna Niguel. The move has been postponed several times because of asbestos abatement and other difficulties with the new facility. The move is now scheduled for spring of 1989. Because of the move, most of the San Ysidro staff has found other jobs, and no new permanent hiring at the old facility was permitted. An additional 155 positions from the new Immigration Examinations Fee Account, established by Congress in the 1989 Appropriations Act, were assigned to the new Western Regional Service Center several months ago. Recruitment and hiring are underway, with the first new adjudicators due to graduate from training in April 1989. Additional clerical personnel are being hired and contractor support is also being obtained. Computer hardware is being procured to allow the issuance of return receipts, case tracking, and generation of routine correspondence for all direct mail applications. This equipment should be in place by the end of this fiscal year. Progress in reducing backlogs is expected as these new resources come on line. In addition, planning for the consolidation of the Western Regional Processing Facility for Legalization into the Western Service Regional Center has begun. When accomplished, this will significantly enhance the resources available for adjudicating applications and petitions.

Federal Prison System - Facility in Hawaii

QUESTION: What is the status of the Department's plans to build a Federal detention facility in Hawaii?

ANSWER: Information provided by the United States Marshals Service indicates that the projected number of detainees being held by the Marshals Service in Hawaii and Guam would be in excess of 200 by the year 1991. Based on this data the Bureau of Prisons has reviewed surplus and excess properties in an attempt to find a suitable site. We have recently reviewed the report of the Defense Secretary's Commission on Base Realignments and Closures Act and have identified to the Office of Economic Adjustment a potential location for a detention facility.

Civil Liberties Act

QUESTION: I understand that the Office of Redress Administration (ORA) has already identified approximately 99 percent of the potentially eligible individuals. I also understand that ORA closed its San Francisco office because its work is basically complete.

Given the ORA activity to date, it appears that you will have no difficulty meeting a deadline set by the Civil Liberties Act which states that you should attempt to complete the identification and location of eligible individuals within twelve months after the date of enactment, which was August 10, 1988. Do you agree? If not, why not? What can Congress do to help you meet this deadline? Are the amounts requested for administration sufficient to satisfy your mandate?

ANSWER: While the Act does not set a mandatory deadline, clearly the intent of the law is that all eligible individuals be identified very quickly. Specifically, it says that the Attorney General should "attempt to complete. . .identification and location within 12 months after the date of the enactment. . ." or "within 12 months after the appropriation of funds. . . ." There has been no appropriation to support this effort, although a FY 1989 supplemental has been requested. We have proceeded with the identification and location phase of the program by absorbing the costs within current appropriations. We are trying to complete this process within twelve months after the date of enactment. At this time we have identified over 90 percent of the potentially eligible persons and have addresses for approximately 85 percent of those identified. Therefore, we believe that most of the potential recipients can be identified and located by August 10, 1989, with the exception of a small number of difficult cases. Congress cannot actually assist us in identifying and locating potentially eligible persons other than in providing us with sufficient funds to complete this process. The $2.1 million supplemental appropriation request for FY 1989 and the $3.5 million appropriation proposed for FY 1990 are sufficient for us to complete the identification and location phases, and to make the one thousand payments in 1990 from the $20 million proposed for the redress fund in FY 1990 budget.

QUESTION: The Civil Liberties Act does not require you to identify all recipients prior to beginning payments. The Act contemplates that location and verification of individuals may proceed while payments are being made to verified recipients. Further, the Act states that you "shall endeavor" to make payments to eligible individuals in the order of the date of birth. During your testimony before this Subcommittee, you stated that the Department of Justice will not make any payments until all recipients are identified, and that the oldest "must" be paid first. Please explain the basis for your statements.

ANSWER: Until the regulations for implementing Section 105 are final, all eligible individuals cannot be finally identified. The regulations will address the claims of various persons who have asserted coverage by the Act. At that time verification of individuals for payment can begin. We anticipate that the regulation will become final by the summer of 1989 and payments can begin in the fall of 1989.

The Act establishes that payments should be in the order of the date of birth with the oldest living on the date of enactment of the law receiving payments first and further states that the Attorney General "shall endeavor" to make payment to the oldest first. After funds are appropriated and actual payments are to be made, the oldest living eligible person that has been identified, or his or her limited heirs, will receive payment first.

QUESTION: As you know, many of the eligible individuals are in their 80's and 90's. It is estimated that over 1,000 eligible individuals will die each year. From a pragmatic viewpoint, as more and more eligible individuals die, is it not true that administrative costs multiply exponentially with the added burden of tracking down and verifying the limited heirs permitted to collect under the Civil Liberties Act?

ANSWER: This is very likely to be the case. ORA is currently undertaking an analysis that should provide a reliable projection. Within the next few weeks ORA will take a sample of approximately 100 deceased eligible persons, and undertake all the steps necessary to verify the eligibility of each and to locate and verify the authorized beneficiaries. The results of such a test should provide us with facts necessary to determine the extent of extra administrative costs required to locate and verify statutory heirs permitted to collect under the Act.

QUESTION: Is it true that the Department of Justice's proposed FY 1990 budget submitted to OMB included full authorized funding for the Civil Liberties Act?

ANSWER: The Department submitted a request for the statutory maximum of $500,000,000 as a supplemental for the FY 1989 budget and a request for $500,000,000 in the proposed FY 1990 budget.

QUESTION: In your opinion, what is the ideal scenario for funding the Civil Liberties Act, broken down by fiscal years?

ANSWER: Given the tension between the demands for early completion of this program and the imperatives of fiscal restraint, there can be no ideal scenario. We plan to verify and authorize payment for the number of individuals for whom the Congress provides redress funding in FY 1990 and each succeeding year. The leaders of the redress movement in the Japanese American community have expressed their concerns to us that if Congress decides to allocate funding over the entire ten years authorized by the Act, many internees who have waited over forty years for redress will die without receiving compensation.

QUESTIONS SUBMITTED BY SENATOR DALE BUMPERS

Attorney General

Savings and Loan Fraud Investigations

QUESTION: You mentioned in your statement that one of the "major thrusts" of this budget is the increase in funding by $50 million for the investigation and prosecution of suspected fraud and insider abuse within the Savings and Loan industry. This effort is part of the President's overall "Bailout Plan" for the Savings and Loan industry.

Have you yet developed a plan establishing how the Department will spend these additional monies; i.e., will the activities be focused in certain States and on certain institutions? If so, which ones? Will there be some order in which the Federal Bureau of Investigation (FBI) and United States Attorneys will place the institutions for review?

What size of "return on your investment" do you envision, or how much money do you expect to retrieve from wrong-doers compared to the amount they lost for the Savings and Loan industry? What is your prosecution success rate so far?

Do you believe that fraud and mismanagement had as severe an effect on the Savings and Loan industry as did the farm and energy crises of a couple of years ago?

ANSWER: The Administration's financial institutions fraud and insider abuse package includes a $50 million authorization for three years beginning in 1989.

A budget amendment for $50 million will be forwarded in the near future. However, recognizing the need to enhance enforcement efforts as quickly as possible, the Administration has proposed a 1989 supplemental request of $36.8 million for the Department. The supplemental funding will support 660 new positions, almost doubling the personnel dedicated to the apprehension and prosecution of individuals committing fraud against our financial institutions. Included are 236 new FBI agents to assist in investigations, 118 new prosecutors in the United States Attorneys Offices, 30 new attorneys in the Department's Tax and Criminal Divisions, and 276 additional support personnel for the various components. The 1990 budget amendment would annualize these positions and provide an additional 100 accounting technicians for the FBI. The increase in attorney and support staff in the litigating divisions would enhance our ability to provide a nucleus of experienced prosecutors for task forces, and augment the resources of those United States Attorneys' Offices that may not require a substantial increase in their own resources to cope with a regional crisis, but may from time to time need assistance in investigating and prosecuting such cases. In addition to staffing increases, we will develop new specialized training programs for prosecutors in financial institution fraud enforcement, strengthen administrative capabilities pertaining to coordination of interagency task force activities, and enhance financial institution fraud case tracking capabilities.

Our plan envisions the creation of strike forces in regions of the country where financial institution failures have been widespread. The success of a year-old model task force effort makes it clear that bringing together investigative and prosecutive resources permits a focusing of effort that produces results. Currently more than 12 attorneys from the Criminal Division's Fraud Section, four Assistant United States Attorneys, 25 FBI agents and 16 IRS investigators constitute what has become known as the Dallas Bank Fraud Task Force. The Task Force has brought criminal charges against 33 individuals to date. There have been 20 convictions and only one acquittal. Three defendants are on trial and six are awaiting trial. No plea has been entered for the remaining defendants. Of the twelve defendants sentenced, eight received imprisonment and four were placed on probation. Imprisonment generally ranged from six months to one year, but one defendant received 35 years imprisonment. Fines totaling $133,250 have been imposed and restitution totaling $2,791,500 has been ordered, of which $591,500 was directed to the Federal Savings and Loan

Insurance Corporation. The resources requested by the President will permit the Department to coordinate its attack on crime in financial institutions.

It is clear from the Dallas experience that there will be a limited return on the investment. The imposition of fines and orders of restitution and judgments do not necessarily result in early cash returns either to the United States of the financial institutions. Although successful prosecutions may result in measurable long-term returns that would match of exceed the investment of resources, it is more important that severe penalties be imposed of those who have violated the trust that people expect from the managers of the nation's financial institutions. Without a vigorous deterrent effort, the already serious problem of fraud and insider abuse would only worsen.

The Department considers the savings and loan fraud a severe nationwide problem. We are not in a position to compare it with the recent farm or energy crises.

Federal Prison System

Future Population Projections

QUESTION: You mention in your budget submission that the Federal inmate population projection has been revised from last year. I believe your previous forecast was 72,000 inmates by 1995. Now I see that the Department is projecting 83,500 inmates by 1995.

What accounts for this revision in prison population?

ANSWER: The previous projection of approximately 72,000 inmates by FY 1995 was a preliminary forecast made before the completion of the United States Sentencing Commission's analysis of the impact of the new sentencing guidelines and the Anti-Drug Abuse Act of 1986. The Bureau of Prisons has worked closely with the Commission in the development of new projections and has revised its FY 1995 projection upwards to 83,500 inmates.

QUESTION: In 1981, 25 percent of the total Federal inmate population were drug offenders. Has there been a significant change in the inmate population since the enactment of the Anti-Drug Abuse Act of 1986?

ANSWER: The number of Federal inmates incarcerated for drug offenses has been steadily rising. Today, about 43 percent of the total Federal inmate population is drug offenders. However, we are just beginning to feel the impact of the longer sentences associated with the Anti-Drug Abuse Act of 1986, a factor that will further increase the percentage of drug offenders.

QUESTION: What is your projection for the population of inmate drug offenders as a result of the enactment of the Omnibus Anti-Drug Abuse Act of 1988?

ANSWER: Our preliminary analysis indicates that the criminal sanctions in the Act should result in increased commitments to Federal prisons and longer sentences for certain crimes. As yet, we have not developed a specific projection.

Prison Overcrowding

QUESTION: I note that Federal prisons are still overcrowded by a system-wide average of about 60 percent with some individual institutions overcrowded by more than 100 percent. Can you provide the Committee with specific examples of the problems that Federal prisons are facing as a result of operating at extreme levels of overcrowding?

ANSWER: Prison overcrowding is commonly related to an increased potential for inmate idleness, inmate violence and inmate litigation. It has been judged as a major contributing factor in some of the worst State prison disturbances. We have been fortunate in the Federal Prison System (FPS) that major disturbances have not occurred because of these factors.

However, within FPS, our experience has shown that insufficient space breeds restlessness and creates tensions which are experienced by staff as well as inmates. Overcrowding increases the difficulty of keeping inmates constructively occupied, mentally and physically. Increasing the number of inmates without commensurate increases in staff creates stress and burnout of staff resulting in high staff turnover. This is especially true of the custodial staff who are in direct contact with the inmates. But it is also a factor in any of the functions where workload increases proportionately to inmate population increases, for example, unit management, medical and health services, inmate records and processing, etc. Crowding facilities beyond design capacity also increases the "wear and tear" of the plant and accelerates plant maintenance, renovation and rehabilitation costs.

QUESTION: How does the 1990 request before this committee address the problems caused by overcrowding?

ANSWER: The major theme of this budget is to continue to expand the capacity of the Federal Prison System to keep pace with projected increases in the Federal inmate population and to simultaneously reduce prison overcrowding to 30 percent by 1995.

In 1990, we are requesting $45.4 million and 634 positions to open a medium security Federal Correctional Institution at Three Rivers, Texas; five minimum security Federal Prison Camps; and newly constructed housing at six existing institutions. Taken together, these activations will bring 2,680 new prison beds on-line in 1990.

In addition, this budget includes $360.6 million for the construction of 7,845 new beds of which 1,000 beds are designated for Federal detainees. These include the construction of two correctional complexes (separate maximum, medium and minimum security level facilities, sharing the same site), one in Northeastern and one in Western United States; construction of a Metropolitan Detention Center in Miami, Florida; expanding capacity at nine existing institutions including two detention units; and acquiring surplus property for conversion to minimum custody prison facilities. The request also includes a proposal to undertake a long-term leasing program for two Federal Correctional Institutions which would provide 580 beds each. The Federal Prison System would staff, manage and operate these facilities.

QUESTION: The President's 1989 budget supported the goal of reducing overcrowding in the Federal Prison System to 20 percent by 1995. I notice the 1990 budget restates the goal of reducing overcrowding down to a 30-percent level by 1995. Why the change? Will you compensate by increasing staff levels?

ANSWER: Basically, this change acknowledges the reality of the budget deficit and the high cost of prison construction. A higher level of overcrowding would be manageable if increased staffing levels were provided beginning with an increase of 1,500 positions in 1990. Current institution staffing levels are based, largely, on design capacity. Prison overcrowding obviously is having an adverse impact on our staff. Turnover rates are continuing to increase as a result of job pressures and demands culminating in "burnout". The increased staffing proposed clearly will help in dealing with these issues.

United States Marshals Service

Fugitives

QUESTION: There was considerable publicity last year about a "turf war" between the Marshals Service and the FBI over the pursuit of fugitives. Actually, I understand the two agencies have been in dispute over fugitive apprehension responsibilities for the last decade if not longer. Nevertheless, in an effort to resolve the problem, the Attorney General identified the specific responsibilities of each agency and made the Associate Attorney General the "referee" for deciding any jurisdictional questions that might arise.

As a result of this decision, what are the specific fugitive apprehension responsibilities of the United States Marshals Service?

ANSWER: The Marshals Service has fugitive apprehension responsibility for Federal cases of escape, bond default, parole and probation violations and misdemeanors, but it does not have responsibility for State and local fugitives sought pursuant to the unlawful flight statutes.

Exceptions to the above are as follows:

1. In bond default cases the FBI retains apprehension responsibility until after adjudication of the original offense if the case is FBI originated.

2. The FBI may elect to assume fugitive apprehension responsibility from the Marshals Service for any case that is connected to an FBI Foreign Counterintelligence, FBI Organized Crime or FBI Terrorism investigation.

3. The FBI or the Drug Enforcement Administration (DEA) may elect to assume fugitive apprehension responsibility from the Marshals Service in cases where the FBI or DEA is seeking the fugitive based on charges for additional offenses beyond that of being a fugitive.

4. The DEA may delegate to the United States Marshals Service (USMS) the apprehension of fugitives based on warrants generated by DEA investigations seven days after the issuance of the warrant.

QUESTION: How many specific disputes have been referred to the referee and how were they resolved?

ANSWER: Since the approval of the August 11, 1988, fugitive apprehension policy, several questions have been referred to the Office of the Associate Attorney General. Initially, the principal areas of concern addressed by the Associate's Office involved interpretations of the policy itself. At a meeting with the heads of the FBI, DEA, and USMS on November 8, 1988, several questions relating to respective agency jurisdiction over foreign and domestic fugitives were resolved. For example, it was agreed that the FBI will not seek a Federal unlawful flight to avoid prosecution (UFAP) warrant on a fugitive being sought by the USMS pursuant to its jurisdiction under the policy, and that the USMS correspondingly will not pursue a fugitive being sought by the FBI under a UFAP warrant. Further procedures were agreed upon at that meeting for the handling of international fugitive matters. Since that time several questions relating to international fugitive investigations have been discussed with the Associate's Office by the USMS and FBI, but there have been no disputes referred for resolution.

QUESTION: Has the action taken last year by the Attorney General ended the long-standing friction between the two agencies? If not, what needs to be done?

ANSWER: The August 11, 1988, policy has proved to be a satisfactory means of resolving issues regarding fugitive apprehension responsibilities. A working group has been established in an effort to provide a continuing vehicle for dealing with questions as they arise, with the goal of establishing a clear and coordinated policy in domestic and international fugitive investigations. In the near future, this working group will be discussing procedures for conducting investigations of foreign fugitives;

whether a request from a United States Attorney or officer of the court in a particular case takes precedence over the jurisdictional allocation in the policy statement; and USMS's involvement in seeking the apprehension of State or local fugitives who travel interstate for whom no Federal warrant is outstanding.

QUESTION: Will the procedures established to resolve disputes be retained by your Administration? If not, what mechanisms do you believe are needed to resolve disputes?

ANSWER: I have endorsed the policy established by Attorney General Meese for handling fugitive apprehension responsibilities. The policy has set up useful guidelines that facilitate inter-agency cooperation and I will monitor the progress of the working group closely.

QUESTION: In carrying out its fugitive apprehension responsibilities, what does the Department do when a fugitive leaves the United States?

ANSWER: When a fugitive under investigation by the USMS or FBI leaves the United States, the investigation continues regardless of the location of the fugitive with the cooperation of the foreign country involved. Once a fugitive has been located in a foreign country, a provisional arrest request is filed by the Department of Justice through the Department of State with the foreign government in accordance with the terms of the treaty between the United States and host country. Depending on the nature of the fugitive investigation, a request for extradition or an informal deportation is initiated with the foreign government to ensure the fugitive's return to the United States. In countries such as Mexico or the Republic of the Philippines where extradition of their citizens is not possible, efforts are initiated through the Department of Justice to have these fugitives prosecuted in their native country for criminal violations committed in the United States.

Federal investigators use all available means to locate and apprehend a fugitive outside the United States, including cooperation with local authorities and the Department of State. Many cases are processed through Interpol, with which both USMS and the FBI maintain permanent representatives. FBI's fugitive investigations in foreign countries are coordinated by its Legal Attaches. Foreign governments initiate fugitive investigations upon request from the Legal Attaches. The USMS also has developed good working relationships with a growing number of foreign police agencies.

In 1988, several significant arrests resulted from cooperative efforts between the Department and foreign authorities. One of these was the arrest of Juan Matta-Ballasteros, reputedly one of the largest-scale drug traffickers in the Western Hemisphere, who for many years had led a comfortable, well-protected existence in

Honduras, allegedly financed by the profits of drug sales in the United States.

United States Sentencing Guidelines

QUESTION: Will the recent action by the Supreme Court in upholding the constitutionality of the United States Sentencing Guidelines increase the workload for United States Marshals? Do you anticipate an increase in the number of trials, length of trials, and handling of prisoners?

ANSWER: The Marshals Service has already experienced significant workload increases as a result of the implementation of the Sentencing Reform Act (SRA). Since November 1987, when the SRA took effect, the Service's average daily prisoner population has increased 46 percent or approximately 3,300 prisoners (from 7,282 to 10,606 in January, 1988). From 1987 to 1989, prisoner productions have increased from 298,467 to 443,700 (up 49 percent) and total inmate days up 60 percent (from 2,531,525 to 4,064,458). The average stay increased from 30 to 44 days.

The Service did not really begin to experience the impact of the Act until around March 1988, because the new guidelines applied to crimes committed after November 1, 1987. The SRA has led to increased pre-trial negotiations and hearings, and more significantly, an increase of approximately 18 days in the average stay of a prisoner awaiting sentencing.

While the number of prisoners deciding to "take their chances" with a trial instead of a plea may increase, the capability of the Federal judicial system to hold more trials is in doubt due to limited resources and a current backlog of pending trials. In the end, the actual impact may very well be a significant growth in the number of prisoners awaiting trial and thus, continued prisoner load growth and much higher detention costs. From 1987 to 1988, the Service spent approximately $17.8 million more for prisoner detention in contract jails.

Under the provisions of the Act, a more detailed pre-sentence report must be drawn up by the probation officer and reviewed by the United States Attorney and the defense attorney. In some instances, disputes over specific facts contained in the pre-sentence report can lead to a "mini-trial" when the presiding judge may call witnesses for a special hearing on the report.

The impact of the SRA on Marshals Service workload to date has been significant, and it is important to remember that only two-thirds of the judicial districts have implemented the provisions of the Act. The recent Supreme Court decision (Mistretta vs. United States, No. 87-7028, decided January 18, 1989) now requires the other districts to implement the SRA as well, which will result in an even greater growth in workload and prisoner detention costs, and make budget projections even more difficult.

QUESTIONS SUBMITTED BY SENATOR FRANK R. LAUTENBERG

Attorney General

Drug Enforcement

QUESTION: How do you plan to integrate your drug enforcement responsibilities with other agencies in the drug war? What will your relationship be with the "drug Czar"? How will your approach to the drug war on both supply and demand side differ from Attorney General Meese's?

ANSWER: As you know, the commitment to end the scourge of drug abuse in America is one of the President's highest priorities. I am already working with Bill Bennett, the Director of National Drug Control Policy, to further develop and implement a coordinated drug strategy.

Additionally, I intend to pursue a close working relationship with the Director of the Office of Management and Budget, which is essential to our success in these endeavors. I shall work with Mr. Darman to ensure that our efforts obtain the most optimal return from the Department's drug resources.

Concerning my approach to the drug war, I have said many times, if we want to lose the war on drugs, we should just leave it to law enforcement. We must pay equal attention to the demand side by reducing the consumption of drugs through programs of prevention, education, rehabilitation, and treatment, and holding the user accountable for a share of the economic and social costs of drug dependency. A sustained commitment to both the demand and supply strategies is essential if we are to be successful.

While demand reduction is not the primary responsibility of the Department of Justice, there are several demand reduction programs within the Department that I support and plan to continue. These include the efforts of the Drug Enforcement Administration (DEA) and Federal Bureau of Investigation (FBI) Demand Reduction Coordinators who have joined forces with the National Youth Sports Coaches and the Boy Scouts to develop and implement drug abuse prevention programs. Likewise, the Immigration and Naturalization Service's (INS) Border Patrol conducts its own drug awareness programs in public schools. The Bureau of Justice Assistance works closely with and supports the National Crime Prevention Campaign, featuring "McGruff the Crime Dog." The "Just Say No" campaign, which educates children about the dangers of drugs, includes a 23-minute McGruff video available at no cost to all law enforcement and educational institutions.

It is my belief that law enforcement groups should use their position of knowledge, respect and authority to educate our citizens to the dangers associated with the use of illegal drugs and steer them away from substance abuse to a drug-free life.

In addition, we should not forget that every drug-related investigation and the increased emphasis on user prosecution have a demand reduction aspect as well. Encouraging street level enforcement contributes greatly to the overall demand reduction strategies, serving as a deterrent to drug trafficking and abuse by raising the costs of drug use and trafficking.

Throughout the Administration of President Reagan, Attorneys General Smith, Meese, and I worked to strengthen Federal efforts both on the demand side and the supply side. Different policies and approaches will be used as we identify those efforts that are most successful. I see little point in comparing approaches, because everyone involved has been sincerely committed to solving a very intractable problem.

QUESTION: The Anti-Drug Abuse Act of 1986 included provisions to establish penalties for persons employing or using persons under 18 years of age in drug operations (21 U.S.C. 845b(c)). How many individuals have been prosecuted under this law? How many have been convicted and sentenced? Have the penalties served as an effective deterrent?

ANSWER: The following chart shows the prosecutions under 21 U.S.C. Section 845b:

	1986	1987	1988
Filed	0	10	31
Pending	0	3	22
Guilty	0	7	18
(plea)	0	6	14
(trial)	0	1	4

All closed cases resulted in either a guilty plea or a conviction at trial. No defendants have been acquitted of this charge. There have been no reported charges under the enhanced penalty provision of 21 U.S.C. 845b(c). This is probably because insufficient time has passed since the enactment of this section for a person to violate Section 845b after a prior conviction under the same section 845b. Although there has been insufficient time to fully evaluate the deterrent effect of Section 845b, we believe the enhanced penalties will have a significant deterrent effect. Section 845b is also important as a model statute for our States. Many drug crimes involving the use of minors are street crimes. These crimes are more often investigated and prosecuted by State and local authorities.

QUESTION: Concerns have been expressed in New Jersey that DEA and FBI agents are not visible at the local level in fighting the war against drugs. They would like to see

DEA and FBI agents working with local law enforcement agents to combat street-related drug crimes. What is the Federal role in combating street-related drug crimes? Would the Department of Justice support a demonstration program in selected districts involving a closer working relationship between DEA and FBI agents and local law enforcement officials?

ANSWER: As you know, the DEA has long operated a State and local task force in Newark that includes DEA agents and Federal support for many anti-drug activities of the Newark Police Department.

Our highest enforcement priority is to stop the major drug suppliers by suppressing the production, transshipment, and distribution of illicit drugs at the closest point to the source. If we are able to concentrate our efforts at this level, it will ultimately assist the street-level enforcement effort. However, we have long maintained that it is the responsibility of the Federal Government to facilitate intergovernmental cooperation, which DEA accomplishes principally through the State and Local Task Force program. This program allows us to increase training to State and local officers, exchange intelligence, equipment, and investigative techniques, and develop cooperative cases.

Demonstration projects of the type suggested detract from the National strategy. Given fiscal constraints, resources set aside for a demonstration project necessarily results in a diminution of efforts against targeted major violators and foreign suppression programs. DEA currently maintains an excellent working relationship with other Federal, State, and local law enforcement agencies that are manifested through both the Organized Crime Drug Enforcement and State and Local Task Force programs, along with other cooperative investigations that take place outside of these formalized programs as the need arises.

The FBI's National Drug Strategy (NDS) is designed to address those major drug organizations that control a substantial market share of illegal trafficking. The NDS is, however, a flexible strategy crafted to permit individual field office Special Agents in Charge to identify and address the major drug problems in their territory. The FBI's Newark field office has identified Colombian/South American cocaine trafficking organizations as the single most important drug problem within the Newark Metropolitan area. The magnitude of the primary drug problem coupled with the drug demands of the heroin addict population in Newark and its environs provides little leeway to address drug distribution below regional and national organizational levels. The NDS is specifically formulated to conserve valuable human resources by focusing our limited drug investigative manpower on only those levels of drug organizations considered to pose the greatest and most immediate threat.

State and local law enforcement play a key role in the implementation of our NDS. The Newark office is currently conducting nearly 20 investigations of the highest level drug organizations under the Organized Crime Drug Enforcement Task Force (OCDETF) Program. Over 60 investigations are being conducted under the FBI's Drug Program which do not require the multi-agency approach of OCDETF. Nevertheless, nearly one third of Newark's drug cases have drawn on the expertise, intelligence data and talent of State and local law enforcement agencies. Our commitment to the Federal/State/local law enforcement partnership in Newark, and nationally, remains steadfast.

The FBI and DEA have continued to forge a close working relationship in drug enforcement. In January 1988, FBI Director Sessions and DEA Administrator Lawn initiated the FBI/DEA Joint Drug Plan (JDP) in six selected cities: Chicago, Houston, Los Angeles, Miami, New York and San Diego. These specific cities were selected based on the magnitude of their individual drug problem and the geographic dispersion of territories. The New York/New Jersey area shares a common drug problem, cocaine, and contiguous geographic areas. The Department of Justice has endorsed the FBI/DEA JDP concept.

The JDP was designed to combine the talent and expertise of the FBI and DEA to address only the most virulent drug organizations. An FBI/DEA Drug Intelligence Unit (DIU) was created at DEA Headquarters to support field office investigations by providing a joint tactical intelligence product. The FBI is presently developing a Drug Intelligence System capable of producing an analytical intelligence product as a further expansion of the DIU concept. In both the JDP and the DIU, the FBI and the DEA work together on joint investigations with a common mission.

QUESTION: The Anti-Drug Abuse Act of 1988 extended and expanded the program of grants for State and local drug law enforcement and authorized $275 million for law enforcement grants to States. I understand that you have requested $150 million for both the grants program and the State and local assistance programs for FY 1990. How do the State and local programs supported by these funds complement your efforts to combat the drug problem?

ANSWER: The Anti-Drug Abuse Act of 1988 expanded the grant program for State and local drug law enforcement by incorporating the criminal justice system improvement programs that were authorized by the Justice Assistance Act. The new program is titled Drug Control and System Improvement Grant Program. Under the program, each State has to develop a Statewide strategy to control drugs and violent crime and improve the functioning of the criminal justice system. This process requires that the State define the nature and extent of its problems, analyze and evaluate its current efforts, and identify its resource needs to combat its problems. The requirement to develop this Statewide strategy provides enhanced coordination and cooperation among State, local, and Federal criminal justice agencies and facilitates the flow of information between all levels of government. Even greater coordination is ensured by the creation of the Office of National Drug Control Policy and the requirement for a National Drug Control Strategy, of which there will be a State and local component. This increased coordination should provide a long-term positive impact on the fight against drugs.

QUESTION: In the past, this Committee directed the Justice Department to create a special demonstration task force on drug enforcement in the Eastern District of Pennsylvania. Please provide me with a report on the activities of that task force.

ANSWER: The Violent Traffickers Project is a coordinated approach to identifying, investigating and prosecuting individuals and organizations with a history or potential for violence and engaged in narcotics trafficking within the Philadelphia area. The Project consists of representatives of the following agencies:

- Philadelphia Police Department;
- United States Attorney's Office;
- DEA;
- FBI;
- Bureau of Alcohol, Tobacco and Firearms (ATF);
- INS; and
- Pennsylvania State Police.

The Project was set up by the Department of Justice as a result of suggestions by Senators Arlen Specter and John Heinz in the Summer of 1988.

Acting under the coordination of the DEA, and in close liaison with the United States Attorney's Office, each of the constituent agencies has contributed specific full-time personnel to the Project. The United States Attorney's Office has contributed three Assistant United States Attorneys (AUSAs) full time and four AUSAs part time, DEA - four agents, ATF - four agents, INS - four agents, FBI - four agents, State Police - three agents, and Philadelphia Police Department - ten officers. There are three separate teams within the Project led by an FBI agent, a Philadelphia Police Department officer, and an ATF agent. The various agencies have not received additional funds to contribute personnel to the Project, nor have additional funds been received for the Project itself. Despite this, the participating agencies are most supportive of the Project.

There is an executive level meeting of the constituent agencies approximately every six to eight weeks. At these meetings, the progress of the various investigations is reviewed and decisions are made on targets, additional investigations, resource allocations, and when appropriate, prosecutorial decisions, timing of indictments, efforts to "turn" defendants, etc.

Six separate investigations on violent narcotics trafficking in Philadelphia and the suburbs were originally made. Several other investigations are being considered. Any of the constituent agencies are welcome to designate one or more of its own narcotics investigations as a Project case. One of the three teams is assigned to work on each investigation. In addition to the six investigations which are formally part of the Project, members of the Project discuss other investigative leads and intelligence.

The first indictment resulting from the Project was returned by a Federal grand jury on December 8, 1988, naming 23 defendants and alleging they participated in a highly profitable wholesale distribution and retailing cocaine and marijuana operation in north central Philadelphia. At this time, 12 of the 23 defendants have been arrested and are in custody.

The second indictment was returned on February 23, 1989, alleging firearm and immigration law violations against an individual who was arrested as a result of one of the Project's investigations. Other indictments are expected in the next several months.

Environmental Enforcement

QUESTION: Substantial new law enforcement responsibilities were created by the Superfund Amendments and Reauthorization Act (SARA). What are the Administration's staffing plans for environmental enforcement for FY 1990? New Jersey and other districts are hard pressed to fulfill the demands in environmental enforcement. Would the Administration be willing to assign Land and Natural Resources Division attorneys to the districts rather than maintaining all Superfund staff in headquarters in Washington?

ANSWER: You are quite correct in your statement that the passage of SARA substantially expanded our law enforcement responsibilities; among the most obvious results has been the emphasis on Federal facility compliance and the creation/inclusion of new criminal sanctions. More than half of our 1990 request for increases of 37 positions and $7.4 million is based upon workload associated with environmental enforcement, and in 1990 we expect to have over 150 lawyers staffing environmental enforcement cases.

In 1988, the New Jersey district ranked first among the 94 U.S. Attorney districts in the number of active environmental enforcement cases, and the Division's Environmental Enforcement Section accordingly devoted more than seven attorney workyears to cases from the New Jersey district. However, New Jersey and many other United States Attorney's offices are severely constrained both by staffing levels and by a wide variety of competing, non-environmental litigation demands.

For these reasons, the Land and Natural Resources Division has encouraged the United States Attorneys to seek additional resources specifically for environmental litigation. We also have endeavored to support and assist individual United States Attorney offices as the need arises, and to provide training and resource materials. For example, within the past two years, we hosted a nationwide Superfund conference attended by nearly 500 State and Federal investigators and attorneys, including 92 Assistant United States Attorneys (AUSA); developed and distributed a practice manual; and undertook or participated in the trials and other proceedings of hundreds of cases.

Despite this enthusiastic support from AUSA colleagues, our experience indicates that there would be several major obstacles to reassigning Division attorneys to the districts when it comes to Superfund cases, particularly protracted civil enforcement cases which ordinarily take several years and frequently involve 20 or more defendants. In our experience, many United States Attorneys have expressed similar misgivings.

Moreover, in order to draw funding from the Superfund and then substantiate and account for expenses in later cost recovery proceedings, accurate and detailed reporting and accounting systems must be in place. The implementation of such systems in United States Attorney offices would not only be expensive and time-consuming, but unduly onerous for many AUSAs not involved in environmental matters. Many Superfund cases require the exclusive time and talents of two or more lawyers, while some cases have required that from 5 to 25 lawyers participate. Then, too, many large Superfund cases arise in the smallest, most rural districts, and the need for a reassigned Superfund litigation attorney might disappear the moment a case is settled.

Complicating the situation is the Environmental Protection Agency's (EPA) recent move toward a largely decentralized enforcement program. This leaves the Justice Department as the only centralized office within the Superfund enforcement network capable of ensuring that this vital law is consistently developed and applied. Because environmental law is at such a nascent stage, constantly evolving as new rulings are made and technologies developed, it is likely that, for the foreseeable future, a need for a strong Washington-based core of attorney expertise will exist so that rule-making and regulatory developments can be closely monitored and legislative refinements effected.

In sum, both the United States Attorneys and the Land and Natural Resources Division have important roles to play in the enforcement of SARA and both need additional resources to combat the litigation demands arising out of SARA; these needs cannot be met by merely redistributing existing personnel.

QUESTION: In the past, the Administration has established special prosecutorial task forces and provided resources to help ensure enforcement of laws that address serious national problems. One example is the Organized Crime Drug Enforcement Task Force. Would the Justice Department support an Environmental Task Force in selected districts to ensure enforcement of environmental laws?

ANSWER: Some United States Attorneys have established subcommittees of their regional Law Enforcement Coordinating Committees for environmental enforcement. In addition, it should be noted that the Attorney General has tapped representatives from several sections within the Division, working with staff from EPA and the Coast Guard, to constitute a newly-formed "Ocean Pollution Task Force." Its mission is to assess the five recently-passed statutes that relate to coastal and ocean pollution problems, develop enforcement strategies, train investigative and prosecutorial personnel, and recommend statutory amendments to facilitate the Government's ability to prosecute illegal ocean dumping. Finally, the Land and Natural Resources Division assigns some cases on a geographic or regional basis to foster better relations with the district court, the United States Attorneys and the States.

QUESTION: In his recent budget statement, President Bush directed the FBI to pursue criminal enforcement actions against illegal dumpers of medical wastes. The President also promised to "throw the book" at illegal ocean dumpers. What plans does the FBI have to implement this Presidential directive? What level of resources will you commit to this effort? Over the last twenty years, how many enforcement actions has the Department of Justice brought against illegal ocean dumpers?

ANSWER: In August 1988, the FBI began to trace medical wastes dumped in ocean waters so that the Department of Justice could punish those who dump infective needles into oceans, lakes, and rivers. In September 1988, the New York Field Office of the FBI sponsored an Ocean Pollution Enforcement Conference attended by 80 representatives from over 20 concerned agencies. While ocean dumping represents a new challenge to the FBI in terms of investigative techniques and institutional knowledge, the Bureau is committed to applying all available investigative resources to this effort. For example, a block of instruction on Ocean Dumping and Clean Water Act investigations has been added to field training provided by FBI Headquarters to FBI field agents nationwide. Since 1984, the FBI has trained over 325 of its own agents, and over 1,000 State and local enforcement agents in the techniques of environmental crime investigation.

Environmental crime investigations, in particular Ocean Dumping and Clean Water Act investigations, are considered priority investigations by the FBI's White-Collar Crimes Section. FBI field offices are encouraged to initiate investigations with the Environmental Protection Agency and also with State and local enforcement agencies.

Since 1982, the FBI has conducted eight criminal investigations into unlawful ocean dumping. While several reached the grand jury phase, none reached prosecution. Four of these investigations were open and closed within the last year.

With the exception of oil spill cases, no ocean dumping case referrals have been received from the regulatory investigative agencies (EPA, Army Corps of Engineers, and the Coast Guard). Consequently, no civil judicial enforcement actions have been brought in recent years against ocean dumpers, although the Admiralty Branch of the Civil Division routinely handles cases to recover clean-up costs from oil spills. Further, both the Lands Division's Environmental Enforcement and Wildlife and Marine Resources Sections are working in concert with the Civil Division on a major oil spill case (United States v. Apex, et al.), involving clean-up costs and natural resource damages. We expect additional cases to be referred by the Coast Guard, the National Oceanic and Atmospheric Administration and the Department of the Interior in the near future.

Our first and only criminal prosecution under the Ocean Dumping Act (the Marine Protection, Research, and Sanctuaries Act of 1972) was part of a 37-count indictment brought in September 1987 against the Baytank company of Houston, Texas, its parent company, and 19 individual defendants. Baytank is a large chemical storage facility and its Norwegian parent company is one of the largest shipping companies in the world. The individual defendants included 14 seamen (seven captains and seven first mates), three corporate executives (including the executive vice-president and environmental specialist) and two other corporate employees. The trial judge granted defendants' motion for dismissal on numerous charges, including the seven counts charging violation of the Ocean Dumping Act. The jury convicted Baytank and the three corporate executives of various Resource Conservation and Recovery Act (RCRA), Superfund, and Clean Water Act (CWA) charges. On January 13, 1989, the trial judge granted a motion for a new trial for all defendants on the Superfund and CWA charges. He also granted a judgment of acquittal notwithstanding the verdict for the individuals of the RCRA violations. On January 24, 1989, he sentences Baytank to a fine of $50,000 and five years probation. Both the Government and Baytank are appealing the case.

The level of resources needed for enforcement of the medical waste and ocean dumping acts is difficult to determine given our relative lack of prior experience, uncertainty regarding the number of investigative resources to be devoted or the level of referrals forthcoming. The Ocean Pollution Task Force will be looking further at this issue. Nevertheless, as the Baytank experience suggests, we are anxious to find and press similar such cases as circumstances and resources permit.

QUESTION: Evidence was recently discovered that one of the companies transporting sludge for ocean dumping was dumping sludge illegally as the sludge was being loaded onto the barge. EPA said it was deferring to the States to take enforcement action in part because it is so hard to get the Justice Department interested in these cases. EPA also has deferred to the States to take action to stop illegal discharge of garbage from operations at the Fresh Kills Landfill in New York. Why hasn't the Justice Department become involved in these cases of illegal dumping? Why does EPA complain that it can't get the Justice Department interested in cases of illegal ocean dumping?

ANSWER: We are completely unaware of the source of the assertion attributed to EPA, i.e., that Justice is not interested in ocean dumping cases; we can only reiterate that we have received no such case referrals from EPA or other agencies in recent years. We are prepared to prosecute vigorously any meritorious matters that are referred and to discuss this matter with EPA managers to ensure that both the Agency and the Department are effectively pursuing environmental violators.

As to reports of specific incidents involving sludge transportation, we assume this relates to the General Marine Transport Companies in the New Jersey-New York area. Again, we have not received a referral from EPA or other Federal agency to take civil action in this matter. In any event, our staff has discussed this matter with staff from the New Jersey Department of Law, which appears to be fully capable of handling the issue at this time.

Regarding the Fresh Kills Landfill in New York, we understand that, subsequent to a grand jury investigation, the United States Attorney's office in the District of New Jersey declined criminal prosecution in 1988 based on past events, and that appropriate information was turned over for review of possible civil proceedings; we have advised the court in the civil case that Federal participation must await rule-making on the Shoreline Protection Act.

QUESTION: President Bush also said that he would propose legislation to strengthen the Ocean Dumping Act by authorizing civil penalties and felony level criminal penalties for illegal dumpers. Aren't these enforcement tools already authorized under the Ocean Dumping Act as amended last year by the Ocean Dumping Ban Act? What exactly will the Administration's bill provide? When will the bill be submitted to Congress?

ANSWER: The Ocean Dumping amendments enacted late last year were certainly helpful in renewing efforts to halt all ocean dumping eventually; however, certain enforcement issues we attempted to bring to Congress' attention during markup were not addressed. The amendment, for example, does not allow for civil penalties to be assessed by district courts, and it does not include broad, felony-level criminal sanctions. The President has made it a priority to come back to the Congress this year and ensure that these additional enforcement tools are provided. This stronger bill, which is being drafted now but has not yet been finalized or considered in interagency review, will provide for integrated penalty/injunctive relief actions, as well as a full range of administrative, civil judicial and criminal refinements.

Staffing Levels of New Jersey FBI, DEA and United States Attorney Office

QUESTION: What are the current and contemplated staffing levels of the United States Attorney, FBI and DEA in New Jersey? Please provide me with a report on the activities of the DEA office in Camden.

ANSWER: DEA has three offices in New Jersey (Newark, Camden and Atlantic City) which are currently staffed with a total of 100 personnel, 57 of whom are special agents. Staffing plans call for an additional agent and professional position to be added this year.

The Newark Division of the FBI has seven offices in New Jersey (Newark, Atlantic City, Red Bank, Piscataway, Parsippany, Trenton and Hackensack) which are currently staffed with a total of 408 positions, of which 269 are special agents.

The FBI also has an additional 16 special agents authorized for assignments to the Camden, New Jersey, Resident Agency (Philadelphia Headquarters).

The District of New Jersey is currently allocated 74 Assistant United States Attorneys and 82 non-attorney positions. Including the United States Attorney, the district's total allocation is 157 positions. Based on current funding levels, there are no anticipated increases in this allocation at this time.

In 1988, the DEA Camden office accounted for 46 arrests, of which 22 were Class I and II violators; removals of 26.7 kilograms of cocaine, 1 kilogram of heroin, 1.4 kilograms of cannabis, and 52,366 dosage units of dangerous drugs; and asset seizures totalling $190,000. The Camden Resident Office has been involved in three major cases this year. One methamphetamine laboratory case, worked in conjunction with the State Police, was recently concluded and resulted in nine Class I indictments. A recent cocaine distribution and conspiracy case has culminated with three arrests and an anticipated 10 indictments pending in State court. Finally, a case was recently concluded which resulted in the seizure of four pounds of methamphetamine, $100,000 cash, and jewelry valued at $40,000.

QUESTION: I understand that United States Attorneys nationwide must respond to a survey prepared by the Executive Office for United States Attorneys requesting personnel needs. What is that assessment and request of the United States Attorneys for FY 1990? Can you provide a copy of the New Jersey survey? What are the Justice Department's plans to address the serious staffing needs of the United States Attorneys Office in New Jersey?

ANSWER: Every year the Executive Office for United States Attorneys sends a "Spring Call" to the districts asking them to submit their resource requests (including staffing requirements) for the upcoming fiscal year. The District of New Jersey submitted their FY 1990 request in the spring of 1988. Their request for additional personnel, at that time, was as follows:

	AUSAs	Paralegals	Support
Criminal	6	1	3
Civil	2	0	1
Organized Crime Drug Enforcement Task Forces	2	1	1
Administration	0	0	2
TOTAL	10	2	7

In November, 1988, Congress passed the Anti-Drug Abuse Act of 1988. This Act provided funding to the United States Attorneys for additional positions. In assessing how these positions should be allocated, the Executive Office for United States Attorneys surveyed the offices of the United States Attorneys on two occasions as to their resource needs in the program areas of asset forfeiture and Organized Crime Drug Enforcement Task Forces (OCDETF) and general narcotics.

The District of New Jersey requested 15 additional Assistant United States Attorneys (AUSAs) to augment their staffing in all areas (civil, criminal, OCDETF, and asset forfeiture) in the initial survey. The Executive Office allocated to the district two asset forfeiture attorneys, two corresponding non-attorney positions and two OCDETF attorneys.

In response to the second survey, New Jersey requested 10 non-attorney positions and six additional AUSAs to handle drug work. The Executive Office allocated an additional three AUSA positions for general narcotics and an additional five non-attorney positions.

The following table summarizes the new position allocations New Jersey received in FY 1989:

	AUSAs	Paralegals	Support
Asset Forfeiture	2	1	1
OCDETF	2	0	2
Narcotics	3	2	1
TOTAL	7	3	4

In addition, New Jersey requested and received four contract support positions for asset forfeiture work for FY 1989.

With the addition of seven attorneys and seven non-attorneys in FY 1989, the District of New Jersey has a total of 74 AUSAs and 82 non-attorney positions. While this is less than what the district requested, these additional resources should address their most serious staffing needs.

The FY 1990 survey returned by the United States Attorney for the District of New Jersey has been provided to the Committee.

Fairton, New Jersey Facility

QUESTION: I am very interested in the new prison being constructed in Fairton, New Jersey. What is the target date for the opening? What, if any, obstacles could cause that date to slip? What will the prison's capacity be? How many new jobs do you anticipate will be created by the construction of the prison? How many of those positions will be filled by transfers of current Bureau of Prisons employees, and how many will be local residents? Assuming the opening date does not slip, when will the Federal Bureau of Prisons start hiring staff for the new facility? What is the Bureau of Prisons' long-range construction plans in the Northeast?

ANSWER: The Federal Correctional Institution, Fairton, New Jersey is scheduled to be activated in December 1989. There has been the possibility of a delay in the completion of the contract that could delay the activation. We are currently assured that the potential delays are being avoided and are anticipating a December activation. The facility has a total of 550 beds. This facility will have approximately 220 staff, approximately 55 to 60 percent of which will be hired locally. The Bureau of Prisons has already begun hiring in order to transfer experienced employees to the facility. Local hiring will begin the month of April. Since the largest portion of the Bureau of Prisons' population is from the Northeast, and the Northeast Region currently has the greatest shortage of beds, the Northeast Region is projected to have the largest portion of future construction. The Bureau of Prisons' Capacity Expansion Plan projects a need for 3,620 additional beds in the Northeast Region to be funded through FY 1993.

Civil Rights Enforcement

QUESTION: During the past eight years the Justice Department has pursued a narrower role for the Federal Government in enforcing civil rights laws. Will your approach toward the interpretation and application of civil rights laws differ from those of Attorney General Meese?

ANSWER: It ill serves us to debate the past when so much remains to be done. My commitment (and that of the new Assistant Attorney General for Civil Rights after he has been confirmed) is to enforce the civil rights laws vigorously and completely. Our positions in court will urge that the statutes passed to remedy discrimination should be interpreted to achieve that goal. After the courts have ruled, we will apply their interpretations unless and until the statutes are modified.

Criminal Fines

QUESTION: In my view, criminals should not benefit by the real decline in the value of criminal fines that is caused by inflation. I therefore plan to reintroduce a modified version of legislation I introduced in the 100th Congress, S. 1015, to adjust the maximum level of criminal fines to account for inflation every five years. The goal of the legislation is to take fine levels off the unstable "automatic pilot" of inflation, and keep their real value at the level set by Congress. Do you support that concept? Why or why not?

ANSWER: We do not support the concept, as embodied in S. 1015 in the 100th Congress, of providing for adjustments based on the consumer price index to the criminal fine schedule in 18 U.S.C. 3571 by the Attorney General. In that bill the adjustments were to be made every four years.

In our view S. 1015 was unnecessary and would have created administrative problems that outweighed its value. There is no reason, in light of past experience or likely inflation rates in the future, to require updating fine levels even on a five-year basis. The amount of any increase would be of only marginal utility and would create a level that is administratively inconvenient. S. 1015 provided that the number was to be rounded to the nearest multiple of $100. Thus, in five years, the maximum fine level for an individual committing a felony could be, instead of the present $250,000, a number such as $276,300.

Under S. 1015, prosecutors, defense counsel, and the courts would have been forced to consult the Federal Register to determine the maximum fine level in effect at the time a particular offense was committed. Since there is a lag between the date of an offense and the completion of an investigation and prosecution, several different maximum fine levels could have been in use at any given moment. S. 1015 would have created confusion in a criminal fine system that has recently undergone a series of significant changes beginning with the Criminal Fine Enforcement Act of 1984, Public Law 98-596, the Sentencing Reform Act of 1984, enacted as part of the Comprehensive Crime Control Act of 1984, Public Law 98-473, and finally the Criminal Fine Improvements Act of 1987, Public Law 100-185.

We agree with the notion that maximum fine levels should periodically be reviewed to assure that they will provide meaningful penalties in light of inflation. However, Congress has not proved reluctant to raise fine levels when appropriate. Moreover, the need for an automatic adjustment of maximum fine levels is greatly diminished by the fact that present Federal fine law (18 U.S.C. 3612(f)) contains a provision for a maximum fine of double the pecuniary gain or loss resulting from the offense where this amount is greater than that otherwise authorized. Thus, a response to inflationary pressure is reflected in the current law.

For all of the above reasons, we believe that S. 1015 was ill-advised. At most, a case could be made for a once-a-decade adjustment of fines to the nearest $5,000 or $10,000.

There were additional problems with S. 1015. It could have created ex post facto problems if the adjusted fines were meant to apply to fines imposed in the years designated, regardless of when the offense took place. The adjusted fine levels may apply only to offenses committed after the adjustments take effect. Finally, section 5 of the bill would have required the Director of the Office of Management and Budget (OMB) to issue an annual report that included the number and amount of criminal fines imposed under each provision of law providing for fines and the number and amount of fines actually collected. However, the collection of data and preparation of reports by OMB seems unnecessary in light of the fact that, pursuant to 28 U.S.C. 604(a)(17), the Administrative Office of the United States Courts is developing a system that we understand will provide comprehensive information on fines imposed and collected.

Civil Penalties

QUESTION: There are hundreds of civil penalties throughout the United States Code that have not been updated in many years. Some date back as early as 1793. Last year, the Senate Subcommittee on Oversight of Government Management approved legislation I introduced, the Federal Civil Penalty Inflation Adjustment Act, that would establish a mechanism for periodically increasing maximum civil penalty amounts to account for inflation. OMB Deputy Director Joseph Wright testified that the bill was "a good piece of legislation that should be passed."

In a letter dated October 17, 1988 from Acting Assistant Attorney General Thomas Boyd, the Justice Department took the position that it had no objection to the bill as reported by the Oversight of Government Management Subcommittee. Is that still the Department's position? Would the Department be willing to take a position in support of the bill?

ANSWER: We have received your recently-introduced bill, S. 535, the Federal Civil Penalties Inflation Adjustment Act of 1989 and it is under review in the Department at this time. I cannot, of course, take a position on the bill until our review is complete.

QUESTION: Would you provide the Subcommittee with the total number and amount of civil penalties assessed and collected by the Department of Justice in FY 1988? If these figures are not available, do you believe a reporting mechanism should be established to keep track of these figures?

ANSWER: The following figures provide the Department's best estimates of the requested information. We do not maintain information on civil penalty assessments nor does the Administrative Office of the United States Courts. While data on civil cash collections is maintained by the Department, it includes collections for debts other than civil penalty assessments, for example, student loans. It should also be pointed out that penalties assessed and collected in a single fiscal year have little or no relationship to each other.

Organization	1988 Collections of Civil Fines, Penalties & Debt
U.S. Attorneys	$215,223,943
Civil Division	151,154,475
Tax Division	32,730,850
Antitrust Division	2,987,376
Land and Natural Resources Division	1,681,533
Civil Rights Division	6,485
IRS Offset Program	7,053,467
TOTAL, Civil Cash Collections	410,838,129

QUESTION: Can you provide an estimate (broad, if necessary) of the revenue that would be raised if all civil penalties under the Department's jurisdiction were increased to account for inflation since they were last set by law?

ANSWER: We are unable to provide such an estimate. First, maximum penalties are set. Actual assessments may fall at any level under this maximum. Any estimate would have to assume that every penalty imposed was the maximum or that every such penalty would be raised by the same percentage. Since neither of these assumptions is valid, any estimate would also be invalid. Second, various civil penalties have been adjusted over the years; a long-term study would be required to determine which penalties would be affected and by how much before any estimate could be made.

QUESTION: Regardless of whether the above-mentioned bill is enacted, do you believe the Department of Justice should review civil penalties under its jurisdiction and propose increases to account for inflation?

ANSWER: The Department currently reviews civil penalties. However, this occurs as part of a review of a specific statute rather than as a general review of all civil penalties. During these reviews the need to increase fines is considered from the viewpoints of the level of inflation, the ease of administering any change and the deterrent effect of any increase.

Refugee Policy

QUESTION: The Refugee Act of 1980 specifies a procedure for dealing with unexpected increases in the refugee population, the emergency midyear consultation. The greatly increased Jewish emigration the Soviet Union has permitted, has obviously resulted in just such an unexpected increase. In a letter to you written on February 8, 1989, and signed by more than half the Senate, we urged you to call for such a consultation so that the Administration and Congress could together determine the appropriate ceiling, funding levels and funding sources to accommodate the projected Soviet refugee flow in FY 1989. Do you have plans to hold such consultations with Congress? If so, when will they take place? If not, why not?

ANSWER: Consultations on the refugee question are currently scheduled for May 17, 1989.

QUESTION: It is my understanding that available refugee numbers for Soviet refugees may run out within the next two weeks. Does the Administration plan to front-load the numbers available for the rest of the year into this quarter? If not, what does it plan to do about this situation?

ANSWER: The Administration has been front-loading Soviet refugee admissions numbers since the beginning of the fiscal year. In addition, some admissions numbers were shifted from other geographical regions for use by the Soviet refugee program; current plans are to replenish these "loans" with new numbers made available through the emergency consultations process.

While the last of currently available admissions numbers are indeed being used during the next few weeks, we believe that the remaining numbers will be sufficient to continue admission of approved Soviets until any new numbers are available under an increased admissions ceiling.

The Administration has agreed to hold statutory emergency consultations with Congress to raise the current refugee admissions ceiling. We expect these consultations around May 17, 1989, with a formal revised Presidential Determination issued shortly thereafter providing for the admission of approximately 24,500 additional Soviet refugees in FY 1989.

QUESTION: In the letter of February 8, 1989 referred to above, I and other Senators called on the new Administration to reverse its departure from its longstanding practice of considering all Soviet Jews as refugees. This policy is founded on a long history of discrimination, anti-Semitism, anti-Zionism, and restricted opportunities for Jews in the Soviet Union. The reforms initiated by President Gorbachev are encouraging, but have yet to take hold in the daily lives of Soviet Jews and other religious minorities. In fact, one byproduct of "glasnost" is that extremist groups, including virulent anti-Semites, are growing increasingly outspoken. The United States should not modify its position on such a sensitive issue as refugee status until real change has taken root in the Soviet Union. Do you favor reversing this policy? If not, why not?

ANSWER: The Refugee Act of 1980 incorporated into law the internationally-recognized, country-neutral definition of refugee. This legislation requires INS to take into account all available information about the country in question, as well as the individual's specific circumstances, before making a determination of refugee status. Each refugee must establish that he or she, as an individual, has been persecuted or has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. Decisions on a refugee's eligibility must be made on a case-by-case basis according to this standard, rather than according to the broader pre-1980 "country designations".

The vast majority of Soviet Jews have been found eligible for refugee status. The Department of State, other United States Government agencies, and private organizations have provided helpful reports on country conditions in the Soviet Union. You may be assured that INS officers in Rome and Moscow give significant weight to the long history of anti-Semitism in the Soviet Union.

QUESTIONS SUBMITTED BY SENATOR ROBERT C. BYRD

Attorney General

Drug Problem and Training Needs

QUESTION: The drug problem in the United States is reaching pandemic proportions. Fighting this problem will require a massive effort on the part of a number of Federal Government agencies. In view of the magnitude of the problem and the need for much greater interdiction efforts, I understand that there will be an increasing need for more Drug Enforcement Administration agents. It is my understanding that the United States Drug Enforcement Administration (DEA) will soon be forced to move from the Federal Bureau of Investigation (FBI) Training Academy at Quantico, Virginia, and may be in the market for a site to construct a new, state-of-the-art training facility in FY 1990. What are your plans for providing the DEA with a training facility in FY 1990?

I understand that one of the options being considered in relocating DEA's training facility includes utilizing an existing vacant military facility outright. Would it not be preferable to design and build a facility specifically for the DEA which would satisfy its unique requirements and include the specifications needed for the expanded war on drugs?

I have been advised that there may be land available bordering Routes 81 and 70 in West Virginia which would be available for the construction of a first-rate facility. This land would have the advantage of being located near a metropolitan area (Martinsburg) with easy access to the airport. I further understand that the landowners would be willing to finance the construction of a facility and lease it to the DEA, thereby avoiding substantial outlays by the Federal Government. What are your views on this matter?

ANSWER: DEA's 1990 budget does not contain a request for a new DEA training facility. Instead, the budget contains a $4 million request for expanded in-service drug law enforcement training at an existing facility. Although space restrictions at the FBI Academy prevent DEA from conducting a sufficient quantity of in-service and State and local training at the FBI Academy, DEA is not being forced to move from the FBI Academy. DEA plans to continue basic agent training at Quantico for the foreseeable future.

I have been discussing DEA's training needs with DEA Administrator Lawn. With my approval, DEA has been exploring the possibility of using a surplus military facility as an additional training site for in-service and State and local drug law enforcement training. DEA has not yet secured such a facility.

Although the use of vacant land near Martinsburg, West Virginia may be feasible logistically, it is not necessary and would be opposed by the Administration. The identification of options is appreciated, but in the current budget climate the construction of a new training facility would not be cost effective and would duplicate already existing facilities.

Architectural engineering contracts

QUESTION: Last year, in a letter dated August 4, 1988, I brought to your attention that architectural firms located in West Virginia were not given adequate consideration by the Bureau of Prisons in its award of architectural engineering contracts at the Federal Correctional Institution in Morgantown, West Virginia. It was pointed out that since West Virginia bids are routinely limited by mileage, and those in surrounding States by State boundary, West Virginia firms face out-of-State competition for projects in their own State, but are denied the opportunity to compete for bids in neighboring States.

In your reply to me dated September 21, 1988, you acknowledged my concerns and indicated that remedial steps had been taken and staff counselled on this issue. (Copies of the aforementioned correspondence are inserted at this point.)

May I have your assurance that in the future, West Virginia firms will not be discriminated against in the award of contracts either in their own State or in bidding for out-of-State contracts?

Have directives been issued to the Bureau of Prisons and other Department personnel to that effect? Please provide copies of such directives for the record.

ANSWER: Yes, you have my assurance that, in the future, procedures employed by the Bureau of Prisons will not discriminate against architect-engineer firms in the State of West Virginia in the award of contracts either within the State or in neighboring States where the firms are eligible for consideration. As you know, the Federal Acquisition Regulations (FAR) govern selection of architect-engineer contractors.

The FAR requires that each potential architect-engineer firm be evaluated in terms of its location in the general geographical area of the project and knowledge of the locality of the project. The FAR further requires that this criterion be applied in a manner which permits competition among an appropriate number of qualified firms. Attached is section 36.602-1(a)(5) that explains these requirements.

The Department has asked the Bureau to establish, for each prison project, a radius or zone of consideration which both satisfies the FAR requirement and creates a full and open competitive environment. The Department is working with Bureau personnel to ensure that any such radius does not unjustly limit the opportunity of architects in small States, such as West Virginia, to compete for Federal Government contracts.

LETTER FROM DICK THORNBURGH

September 21, 1988

The Honorable Robert C. Byrd
United States Senate
Washington, D.C. 20510

Dear Senator Byrd:

This responds to your letter of August 4, 1988, regarding the selection of architectural firms for projects at the Bureau of Prisons' facilities located in West Virginia. You expressed an understandable concern that architects have been selected in a manner which may be discriminatory because applications for architectural firms for the institutions in West Virginia are limited by mileage rather than state boundaries.

It is my understanding that, when advertising for an architectural and engineering firm, the Bureau of Prisons limits eligibility to a geographic area as near as possible to the project while assuring that an adequate number of prospective qualified firms may bid. The maximum geographical area for eligibility of a firm is, generally, either the state boundary or, if the project is located near a state border, the area may include adjacent states and be limited by a mileage radius.

The Bureau of Prisons' institutions located in West Virginia are both located near state lines. Consequently, advertisement for architectural and engineering firms for projects at these institutions are usually limited by a mileage radius. In this instance, architects from the adjoining state would be eligible to apply. This practice is typical for institutions in other locations which are near the state border. Advertisements for projects at the Federal Correctional Institution, Ashland, Kentucky, for example, typically include an area which would allow firms from West Virginia and Ohio to apply as well as those from Kentucky.

In any selection for architectural and engineering firms, the Bureau of Prisons attempts to be sensitive to the issue of selecting firms which are not only well qualified but are familiar with the institution and with local design and construction requirements. In the vast majority of cases, they do select in-state firms.

I am informed that, in advertising last year for an architectural firm to design a new housing unit at the Federal Correctional Institution, Morgantown, West Virginia, the Bureau of Prisons Regional Office selected a Pennsylvania firm. In reviewing that matter, the Bureau concluded that selection of an in-state firm was not given adequate consideration. The Bureau assures me that appropriate staff have been counseled regarding the sensitivity of the issue and tHat West Virginia firms will in the future be given every opportunity to compete for the design of in-state projects. I understand that representatives of the

Bureau of Prisons have discussed the situation with West Virginia firms and that those firms are generally satisfied with the remedial steps which have been taken.

I hope this will be responsive to your inquiry and that you will let me know if you have questions or require additional information.

Sincerely,

Dick Thornburgh
Attorney General

LETTER FROM SENATOR ROBERT C. BYRD

August 4, 1988

Hon. Richard Thornburgh
Attorney General-designate
Department of Justice
Washington, D.C. 20530

Dear Governor Thornburgh:

I have recently been informed by Senator John Glenn, Chairman of the Senate Committee on Governmental Affairs, that the Bureau of Prisons has been selecting architectural firms in a manner which may be discriminatory to West Virginia architects. Senator Glenn states in his July 26 correspondence to me that "Staff research indicates that such discrimination is, in fact, possible under the current system of architect selection."

Senator Glenn further reported that "Bureau of Prisons staff informed Governmental Affairs staff by telephone that West Virginia bids are routinely limited by mileage, but that bids in surrounding states are usually set by state boundary. This means that West Virginia firms face out-of-state competition on local projects, but are denied the opportunity to compete for bids in neighboring states, such as Pennsylvania."

In conclusion, Senator Glenn notified me that in a formal response to the committee's interest in this matter, Mr. J. Michael Quinlan, the Director of the Bureau, stated that "Appropriate personnel have been advised to carefully consider the geographical limits for future procurements and to expand the limits of the geographical area beyond the state of the project's location only after consultation with the selecting official."

I would appreciate your looking into this matter, and if necessary, make whatever changes are needed to ensure that the Department of Justice, Bureau of Prisons, no longer selects architectural and engineering firms in a manner discriminatory to West Virginia architects. Please provide me with your comments on this issue.

With best wishes, I am

Sincerely,

Robert C. Byrd

36.516 Quantity surveys.

The contracting officer may insert the clause at 52.236-16, Quantity Surveys, in solicitations and contracts when a fixed-price construction contract providing for unit pricing of items and for payment based on quantity surveys is contemplated. If it is determined at a level above that of the contracting officer that it is impracticable for Government personnel to perform the original and final surveys, and the Government wishes the contractor to perform these surveys, the clause shall be used with its Alternate.

36.517 Layout of work.

The contracting officer shall insert the clause at 52.236-17, Layout of Work, in solicitations and contracts when a fixed-price construction contract is contemplated and use of this clause is appropriate due to a need for accurate work layout and for siting verification during work performance.

36.518 Work oversight in cost-reimbursement construction contracts.

The contracting officer shall insert the clause at 52.236-18, Work Oversight in Cost-Reimbursement Construction Contracts, in solicitations and contracts when a cost-reimbursement construction contract is contemplated.

36.519 Organization and direction of the work.

The contracting officer shall insert the clause at 52.236-19, Organization and Direction of the Work, in solicitations and contracts when a cost-reimbursement construction contract is contemplated.

36.520 Special requirements.

The contracting officer shall insert the clause at 52.236-20, Special Requirements, in solicitations and contracts when a cost-reimbursement construction contract is contemplated.

36.521 Specifications and drawings for construction.

The contracting officer shall insert the clause at 52.236-21, Specifications and Drawings for Construction, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation. When the Government needs record drawings, the contracting officer shall (a) use the clause with its Alternate I, if reproducible shop drawings are needed, or (b) use the clause with its Alternate II, if reproducible shop drawings are not needed.

SUBPART 36.6—ARCHITECT-ENGINEER SERVICES

36.600 Scope of subpart.

This subpart prescribes policies and procedures applicable to the acquisition of architect-engineer services

36.601 Policy.

(a) The Government shall publicly announce all requirements for architect-engineer services, and negotiate contracts for these services based on the demonstrated competence and qualifications of prospective contractors to perform the services required at fair and reasonable prices. (See Pub. L. 92-582, 40 U.S.C. 541 et seq.) Sources for architect-engineer contracts shall be selected in accordance with the procedures in this subpart, rather than the solicitation or source selection procedures prescribed in Parts 14 and 15 of this regulation. Compliance with the procedures in this subpart will constitute a competitive procedure in the acquisition of architect-engineer services (see 6.102(d)(1)).

(b) Other than "incidental services" as specified in the definition of architect-engineer services in 36.102, services that do not require performance by a registered or licensed architect or engineer, notwithstanding the fact that architect-engineers also may perform those services, should be acquired pursuant to Parts 13, 14, and 15.

36.602 Selection of firms for architect-engineer contracts.

36.602-1 Selection criteria.

(a) Agencies shall evaluate each potential contractor in terms of its—

(1) Professional qualifications necessary for satisfactory performance of required services;

(2) Specialized experience and technical competence in the type of work required;

(3) Capacity to accomplish the work in the required time;

(4) Past performance on contracts with Government agencies and private industry in terms of cost control, quality of work, and compliance with performance schedules;

(5) Location in the general geographical area of the project and knowledge of the locality of the project; *provided*, that application of this criterion leaves an appropriate number of qualified firms, given the nature and size of the project; and

(6) Acceptability under other appropriate evaluation criteria.

(b) When the use of design competition is approved by the agency head or a designee, agencies may evaluate firms on the basis of their conceptual design of the project. Design competition may be used when—

(1) Unique situations exist involving prestige projects, such as the design of memorials and structures of unusual national significance;

(2) Sufficient time is available for the production and evaluation of conceptual designs; and

(3) The design competition, with its costs, will substantially benefit the project.

QUESTIONS SUBMITTED BY SENATOR BROCK ADAMS

Attorney General

Office of Redress Administration

QUESTION: Last year Congress passed the Reparations bill to compensate Americans of Japanese ancestry interned during World War II. This legislation acknowledged the injustice done to 120,000 persons incarcerated solely on the basis of their ancestry. The Department of Justice was selected to be the lead department to administer this program. Since it has been established that the internees to be compensated are slowly dying off, it is imperative that we proceed with this process as quickly as possible. How soon will the Department implement this program? Do you agree that it is critical that we proceed as expeditiously as possible?

ANSWER: On September 7, 1988, I delegated the Attorney General's responsibilities under Section 105 to the Civil Rights Division which established the Office of Redress Administration, ORA, to implement the law. ORA began the program by setting out a three phase implementation plan. Phase one is "Identification and Location," phase two "Verification and Notification," and phase three "Payment." Phase one is underway, and achieving good results. ORA has collected historic records from various sources, such as the National Archives, and created a computer tape of them. The historic information is being updated through two sources: by official automated records, such as those held by the Social Security Administration and State vital statistics agencies; and by information volunteered directly from potential recipients. To encourage the latter, ORA launched an intensive public outreach program that included establishment of toll-free lines and a post office box, opening of a temporary office in San Francisco, release of information to the media including newspapers in the vernacular in the United States, Japan and Canada and installation of two dedicated phone lines at the United States Embassy in Tokyo.

Clearly, the intent of the law is that all eligible persons be identified very quickly. Specifically, it says that the Attorney General should "attempt to complete. . . identification and location within 12 months after the date of the enactment. . ." or "within 12 months after the appropriation of funds. . . ." This language is virtually synonymous with our Phase I. In Phase II, "Verification and Notification," we plan to verify and authorize for payment the number of individuals for whom Congress provides redress funding each fiscal year. Leaders of the redress movement in the Japanese American community have expressed their concerns to us that if funding is parceled over the entire ten years allotted by the Act, many of those interned who have waited over forty years for redress, will die without receiving compensation.

QUESTION: Have regulations pertaining to this program been developed within the Department?

ANSWER: Proposed regulations for implementing Section 105 have been drafted and are undergoing review in the Office of Legal Counsel. We expect to publish for comment this spring and in final form by late summer.

QUESTION: Has the Department already developed a list of possible eligible internees?

ANSWER: Yes. The Office of Redress Administration (ORA) has collected historic records from various sources, such as the National Archives, that contain the names and detailed identifying information on more than 110,000 internees. ORA is creating a computer tape of these names. This information is being supplemented by searches for names of individuals in unusual situations such as voluntary evacuees. By the end of this fiscal year, we believe we will have documentary information on all but 100 to 300 potential eligible individuals. This small group includes those with unusual circumstances; for instance, the name of one family member might have been inadvertently omitted from a camp roster.

QUESTION: If this list has been compiled, isn't the next step simply to verify the names. Accordingly, the program can proceed ahead?

ANSWER: The program is proceeding expeditiously. Final determinations of eligibility necessarily must await this resolution of several issues relating to certain classes of persons that will be addressed in the regulations. As noted above, we anticipate that the regulation will become final by the Summer of 1989 and we can begin verification at that time. We will be prepared to verify and authorize redress payments for whatever number of individuals Congress funds in FY 1990 and each succeeding year.

Civil Rights Division Plans

QUESTION: The section on Japanese internment is the only mention of the Civil Rights Division in your statement. Given what I understand to be the deterioration in morale, funding and number of personnel in the Civil Rights Division in the last Administration, can you tell us what your plans are for this Division?

ANSWER: In my statement prepared for the Senate Committee on Appropriations, I took particular care to notify Congress that the Japanese internment legislation was a major budgetary matter that had to be addressed, not only in 1990 but in future years. I also noted that we would get "rougher and tougher on some of our citizens [including] those who violate civil rights laws," but since the Administration had included the Japanese internment request as the only program initiative for the Civil Rights Division, it was our intent to use the statement primarily as a notification of major budgetary thrusts. With the resources currently available to the Civil Rights Division I believe we can embark on a renewed commitment to civil rights enforcement. During the past Administration the Civil Rights Division's budget rose slightly each year. The number of authorized personnel slots in the Division did not decline, although towards the end of the Administration there was a slight decrease in the number of personnel on board due to budgetary restrictions. If the morale of the Division in some way "deteriorated," it should soon be restored.

The plans which Bill Lucas and I have for the Civil Rights Division center on the straightforward application of the Federal civil rights laws. We intend, for example, to continue our vigorous criminal prosecution of hate crimes and crimes involving racial violence, and our careful scrutiny of voting changes subject to preclearance under the Voting Rights Act. Further, in view of last year's amendments to the Fair Housing Act we expect an increase in attacks on housing discrimination and have filed Federal housing discrimination lawsuits seeking monetary damages and civil penalties. In addition, we will continue to attack public employment practices with the purpose or effect of racial discrimination, and strive to obtain appropriate relief. We will carry out a similarly vigorous program in all of our enforcement areas.

The more controversial issues that underlie the past Administration's initiatives, e.g., in the areas of busing and affirmative action, have been largely resolved -- and, I might add, largely in the Administration's favor. Thus, as I have said, I believe we will see less controversy and more straightforward enforcement.

Gun Control And Semi-Automatic Weapons

QUESTION: Has the Department of Justice taken a position on restricting the sale of semi-automatic weapons?

ANSWER: The criminal use of high-powered semi-automatic weapons is the subject of considerable attention by the Department. As the President recently indicated, the Administration is deeply concerned about the use of such firearms by criminals and wants to help develop a national solution to this problem within Constitutional guidelines. Part of the solution to this problem, is vigorous and effective enforcement of related Federal, State, and local laws already on the books, as well as stepped up efforts against all forms of violence-prone criminal activity, particularly drug trafficking. Appropriate Federal actions in this area include: determining what forms of regulation and enforcement already in place at the State level have had measurable impact on criminal access and use of such weapons; exploring workable means for improving enforcement of existing gun control laws, such as the criminal record identification system, now under study; and providing related technical assistance and support to law enforcement are appropriate Federal actions in this area. These activities among others will be pursued aggressively by the Department as part of the Administration's efforts to address the many dimensions of this problem.

Immigration and Naturalization Service

QUESTION: The Immigration Reform Act of 1986 requires the Department of Justice to identify programs of financial assistance in which newly legalized aliens are barred from participating. Because final regulations identifying these programs have not been published, States and the newly legalized aliens themselves are living in great uncertainty. There is great fear that the regulations will be retroactive and will jeopardize the permanent resident status of individuals who are now legitimately receiving services from the States. First, when will the Department publish final regulations; and second, can you commit to this Committee that the regulations will not be retroactive?

ANSWER: The draft final regulation is being reviewed by the Attorney General's Office. We will publish the rule as soon as this review is completed and the material is approved.

The rule will not be retroactive.

QUESTION: On a related note, I believe strongly that Congress did not intend to disqualify newly legalized aliens from receiving legal services through the Legal Services Corporation. Certainly these individuals should be able to secure equal justice under the law, and the legal services program is not a Federal financial aid program. Is the Department of Justice planning to include the Legal Services program in the list of programs for which these individuals will not be eligible?

ANSWER: The draft rule includes the Legal Services Corporation on the list.

Environmental Enforcement

QUESTION: Washington State and others are facing a huge environmental cleanup problem at Federal facilities, particularly at nuclear weapons production facilities. These Federal facilities are obligated to comply with the mandates of our nation's environmental laws, such as Superfund and RCRA. Please describe the Administration's policy regarding enforcement of these laws by the Justice Department against these facilities? In particular, in the last Administration, Attorney General Meese took the position that the Justice Department and the EPA were barred from bringing enforcement action against Federal facilities; is this still the position of the Department?

ANSWER: The Administration agrees that Federal facilities as well as Federal employees must comply with the environmental laws. To this latter end, the United States Attorney's office for the District of Maryland just concluded a successful criminal prosecution of three Federal employees at Aberdeen Proving Ground near Baltimore for violating hazardous waste storage and dumping laws. We will continue to bring such prosecutions where warranted.

The position of the Reagan Administration barring one Federal agency from taking unilateral action against another was premised on a Carter-era opinion issued by the Office of Legal Counsel in 1978. The opinion is based on interpretation of Articles II and III of the Constitution, and subsequent review suggests that it is unlikely to change. Nevertheless, in an effort to further Federal facility compliance, the Department is actively encouraging interagency agreements between EPA, the Federal facility's agency, and the cognizant State environmental agencies, in order to expedite cleanup of affected sites. The most recent example is the pact signed with the State of Washington on February 27, 1989, involving the Hanford nuclear weapons production site. In it, the Department of Energy promised to seek $2.8 billion to finance a cleanup effort of the 560-square-mile reservation. The interagency pact is expected to serve as a model, and we believe that this approach, which took only a year to negotiate, will not only expedite cleanup efforts but avoid the delays and expense associated with further protracted litigation.

Related to our emphasis on negotiating interagency agreements is our obligation to defend those Federal agencies sued for non-compliance in State enforcement actions or citizen suits. Over the past three years, our obligations to both counsel and represent these agencies has increased dramatically.

Use of Closed Army or Navy Bases by the Bureau of Prisons

QUESTION: Has the Department of Justice evaluated the feasibility of using closed Army or Navy bases as sites for additional Federal correctional facilities? If yes, please describe the status of this effort.

ANSWER: Yes. The Bureau of Prisons has reviewed the list of bases recommended for closure and identified 22 locations for further study. The Director of the Federal Bureau of Prisons is a member of the Commission on the Alternative Utilization of Military Facilities and will work with that Commission to acquire space on those 22 locations identified. Additionally, when GSA identifies surplus property, a provision in Title 40 of the United States Code authorizes the Attorney General to determine that such surplus real and related personal property is required for correctional use.

Telemarketing Fraud

QUESTION: What amount of resources does the Department intend to commit during the coming year to telemarketing fraud, and how does this compare to last year's efforts?

ANSWER: Criminal prosecutions of telemarketing fraud are handled mainly by the 93 United States Attorneys. Occasionally, the Fraud Section of the Criminal Division will handle a telemarketing fraud case when asked to do so by a United States Attorney. Generally, the Fraud Section provides assistance to the United States Attorneys as needed. This assistance ranges from advice about investigative strategies and reviewing proposed indictments to assistance in the drafting of indictments and trial preparation and trials.

Two geographic areas in the United States where there has been significant incidence of telemarketing fraud and "boiler room" operations are the Southern Florida and Southern California areas. The United States Attorney offices for the Southern District of Florida and the Central and Southern Districts of California have emphasized prosecuting this activity and have worked closely with State and local law enforcement agencies in identifying and prosecuting telemarketing fraud. In the Southern District of Florida, the United States Attorney has historically employed local prosecutors who have been cross-designated as Special Assistant United States Attorneys, and has designated Assistant United States Attorneys as Special State's Attorneys to help combat the problem of telemarketing fraud.

Generally, over the last several years resources have been allocated by the United States Attorneys based on their determination of priorities within their offices. This determination is made with due consideration of Department level priorities. We expect this practice to continue. While telemarketing fraud is important, drug trafficking, defense procurement fraud, financial institution and securities fraud, and public corruption are several of the higher priority areas competing for investigatory and prosecutorial resources. We do not, however, have reason to believe that telemarketing fraud is being inadequately addressed at the Federal level.

Due to the way statistical data are reported, it is not possible to identify fully all of the resources that have been used over the last two years. In some districts, however, over 10 Assistant United States Attorneys may be involved at any given time in the investigation and prosecution of such offenses. Now that the United States Attorneys have the benefit of receiving an additional 471 Attorneys to do work in the Asset Forfeiture and Narcotics areas, it is expected that more resources be redirected toward the fraud area.

QUESTIONS SUBMITTED BY SENATOR WARREN RUDMAN

Attorney General

Organized Crime Drug Enforcement - Allocation of Resources

QUESTION: Pursuant to the provisions of last year's Anti-Drug Abuse Act, the Department has requested a separate appropriation for the relevant expenses of all Federal agencies participating in the Organized Crime Drug Enforcement (OCDE) Task Forces. Agencies are to be reimbursed for their participation in the activities of the OCDE Task Forces.

Your statements indicate that you believe this structure will enhance drug enforcement activities.

Do you anticipate any major reallocation of resources in the near term?

Can the various law enforcement agencies participating in the OCDE program rely on the availability of funding to fully support the reimbursable personnel slots?

Who in your Department will oversee this account?

ANSWER: As you know, the Anti-Drug Abuse Act of 1988 allows me the flexibility to reallocate resources among the organizational components of the task forces and between regions; however, such reallocations are not planned at the present time. I am pleased to report to you that this entire effort has had the utmost degree of cooperation among all participating agencies. We anticipate continuation of the good working relationships that have developed between all the parties involved in this effort.

As long as the participating agencies can sufficiently document that expenses went towards OCDE Task Force cases, the full amount will be reimbursed. This process will be monitored by an official designated by the Attorney General. Any problems will be discussed at the Washington Agency Representative Group level, which consists of representatives from each of the participating agencies.

This consolidated budget will strengthen the Task Force program in that it will enable more effective monitoring of Task Force resources, which will in turn lead to program efficiencies. The consolidated appropriation will not affect an agency's authority or control over its assigned personnel.

A-76 Contracting-Out Savings

QUESTION: Your budget includes several million dollars in savings resulting from contracting out to the private sector under the Administration's A-76 initiative. Included in these savings are $2.1 million and 247

positions from the Federal Bureau of Investigation (FBI), and $1.09 million and 128 positions from the United States Attorneys account. In the latter account, 86 positions are to be cut from Criminal Litigation and 36 positions from Civil Litigation.

Can you tell us what kind of activities will be contracted out to the private sector?

ANSWER: With respect to the FBI, these A-76 reductions for 1990 have been identified for the Mail and File functions in the Identification and Records Management Divisions. These functions have not yet been subjected to a complete A-76 review. However, the FBI has scheduled the Mail and File functions of both the Records Management and Identification Divisions for study during FY 1989 and FY 1990, respectively.

The FBI has completed two A-76 studies involving its Warehouse/Stockhandling function at FBI Headquarters (FBIHQ) and the library at the FBI Academy. A total of 47 positions were reviewed. At the present time, the FBI is conducting an A-76 review of its Facilities Management function, both at FBIHQ and at the FBI Academy. A total of 270 positions are being studied and the estimated completion date of this study is May 1989.

The United States Attorneys are currently contracting 75 employees to handle asset forfeiture data entry and analysis. This effort was initiated in FY 1989 and is expected to continue, and possibly expand, in FY 1990.

As a result of the United States Attorneys' ambitious A-76 compliance effort, other functions are being considered for contracting to the private sector. The Executive Office for United States Attorneys takes every opportunity to use private sector services when feasible and cost effective. While most of our functions are not conducive to contracting, we are exploring ways to use private sector services in the areas of office automation, legal education, and litigation support.

QUESTION: As a general principle, I support the concept of contracting out Federal functions. However, I wonder whether you feel these activities may compromise law enforcement efforts?

ANSWER: The Department supports contracting out functions of a commercial nature when the private sector can conduct these activities more efficiently. The Department intends to comply with A-76 in this regard and will subject as many of these activities to competition with the private sector as is feasible. However, when it is not possible to separate certain commercial-type activities from those that are inherently governmental in nature, the Department will not require its components to consider contracting out. Such instances would include those where law enforcement efforts could be compromised and where law enforcement personnel could be endangered.

Savings and Loan Strike Forces

QUESTION: President Bush has proposed the establishment of a Savings and Loan strike force at Justice, with funding of $50 million to be reimbursed by increases in deposit insurance fees.

An editorial in the Washington Post last week cites you as indicating that the amounts recovered may not amount to the cost of the prosecutions. The Post concludes by saying that "The Bush administration is right to prosecute the frauds with all the resources that it can bring to the job. . . . But the reason for energetic prosecution is the moral one, not the hope that even the most diligent prosecutors can find much loot to bring back to the Treasury."

Is this an accurate reflection of the situation?

ANSWER: It is more accurate to say that recovering monies obtained by fraud and obtaining restitution for victims who have suffered losses from fraud are among the important objectives of criminal prosecution. Other well-established objectives are punishment and correction of offenders and deterring others from engaging in illegal conduct. The Administration has proposed, as part of its comprehensive package to deal with financial institution reform, additional resources to enable the Department to expand prosecution of fraud in the financial institution industry. As embodied in Senate Bill S.413, $50 million is authorized for FYs 1989, 1990 and 1991. This funding, however, will not be reimbursed from increases in deposit insurance fees. It is new budget authority for the Department.

Expansion of Undercover Authorities

QUESTION: Your budget documents indicate that your FY 1990 authorization request will include permanent undercover authority for the FBI, the Drug Enforcement Administration (DEA), the Immigration and Naturalization Service (INS), and the Marshals Service.

Is it the case that currently only the FBI and DEA have undercover authorities, which since 1980 have been included annually in Appropriations Acts?

ANSWER: The undercover authorities available to the Department were first enacted in the 1979 Department of Justice Authorization Act. With minor changes, they were reenacted in the 1980 Department of Justice Authorization Act. In 1981, 1982 and 1983 these authorities were continued in effect by the general incorporation of the 1980 Authorization Act into the annual Appropriations Act. In 1984, the certification and Congressional reporting requirements were changed and the revised undercover authorities became part of the Appropriations Act. Since then, the Department's undercover authorities have continued as part of the Appropriations Act. The only major change in the authorities occurred in the 1985 Appropriations Act when the undercover authorities were made available to the Drug Enforcement Administration (DEA). Previously, these authorities had been available only for undercover investigations conducted by the FBI. While the FBI and DEA are the only Department of Justice agencies that are annually given undercover authority, they are not the only Federal law enforcement agencies with such authority. Similar authorities were given in permanent law to the Customs Service by the Anti-Drug Abuse Act of 1986 (See 19 U.S.C. 2081) and to the Internal Revenue Service by the Anti-Drug Abuse Act of 1988. (See 26 U.S.C. 7608(c))

QUESTION: Why do the INS and the Marshals Service need these additional authorities?

ANSWER: The FBI, DEA, INS and Marshals Service do not require any authority to conduct undercover investigations. Such authority is inherent in their law enforcement mission. The exemptions that have been made available to the FBI and DEA through the undercover authorities serve principally as technical corrections that allow these investigations to proceed in a covert manner. For example, corporations established as part of a sting operation could not operate covertly if they were required to obtain specific Congressional authorization for their establishment (31 U.S.C. 9102), to deposit all their funds in the Treasury (31 U.S.C. 3302(b)); to include General Services Administration provisions in their leases (40 U.S.C. 129); and to make their purchases through competitive procurement procedures (41 U.S.C. 253).

The need for these undercover authorities arises as a law enforcement agency becomes more sophisticated in the conduct of its undercover investigations. The FBI has been operating with these authorities for eleven years and the DEA for five years. In no case has it been alleged that these authorities have been abused. The INS and the Marshals Service currently conduct undercover investigations and, as those investigations become more sophisticated, it is expected that they will also need to avail themselves of the same undercover authorities. The approval process established under these authorities will ensure a careful review by the Department of Justice of proposed undercover investigations that require use of one or more undercover exemptions.

QUESTION: Does the request for additional authority represent a change in the operations of the two agencies? If not, why are these changes necessary?

ANSWER: There is no specific change planned with respect to the undercover activities of either the INS or the Marshals Service. It is clear, however, that the need for undercover investigations by these agencies is likely to continue to increase rather than decrease, and it is reasonable to expect that these investigations will become more sophisticated in their method of operations. As this occurs, it is likely that these agencies will need to make use of the undercover exemption authorities now available to the FBI and the DEA. The Department is seeking to have these authorities in place as soon as possible so that INS and Marshals personnel will be familiar with the authorities and will recognize the need to seek an exemption from the Attorney General when that need arises.

Assets Forfeiture Fund

QUESTION: On page 22-23 of your testimony, you note that Congress expended considerable effort to remove most of the mandatory expenses of the Assets Forfeiture Fund from the outlay controls imposed on our Subcommittee. This is true; my staff was actively involved in this effort. It was done in recognition of the fact that many forfeiture activities, such as maintaining assets and sharing assets with State and local law enforcement agencies seized as the result of joint operations are unpredictable (or uncontrollable). We sought to ensure the availability of funding for uncontrollable expenses associated with seizing and managing property. This scoring change makes it possible for us to allocate more funds to those programs which are subject to outlay controls.

I am therefore puzzled by the fact that your budget requests language to impose an arbitrary limit on the level of "uncontrollable" costs. If you are able to control these costs by imposing a spending cap, why did we go to so much trouble to argue that they are uncontrollable costs?

Couldn't a spending cap result in a shortfall in this area, say for State and local equitable sharing activities?

ANSWER: The budget request does not impose an arbitrary limit on the level of uncontrollable costs, but simply represents our best estimate of what obligations will be in all categories. If the estimates change, and we require additional funds for these uncontrollable costs, it will be necessary to propose a language supplemental to Congress, in order to increase our budget authority, provided that this limitation is enacted. If OMB or Congress does not allow a language supplemental, and this limitation remains, a marginal shortfall would have to be absorbed against program expenses rather than equitable sharing payments. Thus, there would not be a shortfall in equitable sharing activities.

Debt Collection

QUESTION: The budget for the United States Attorneys includes a new $5 million request to establish a special debt collection program which will provide non-personnel monies for debt collection work. This will include the costs associated with seized properties or businesses.

Under the Assets Forfeiture Fund, payments may be made for a variety of activities associated with property under seizure or forfeited under any law enforced or administered by the Justice Department.

Could some or all of the activities you propose to fund out of this debt collection account be funded by the Assets Forfeiture Fund?

Which activities could be funded out of the Assets Forfeiture Fund, and which could not?

ANSWER: The Assets Forfeiture Fund is not legally available to pay any expenses associated with the seizure of property for purposes other than forfeiture to the United States. This view is explained more fully in the legal opinion of the Department's General Counsel, a copy of which has been provided to the Committee.

The use of property seizure is considered to be extremely valuable within the debt collection context. The expenses arising from the seizure of property for purposes other than forfeiture continue to be the responsibility of the annual operating appropriations of the Department. These appropriations simply cannot absorb the added expense that would arise from the aggressive use of property seizure as a central element of the debt collection program. That is the reason the Administration is seeking the creation of a Debt Collection Fund.

As you are aware, the Administration proposed major reforms to national debt collection practices in the last Congress. Those proposals included creation of a Debt Collection Fund to be financed by a small percentage of funds collected. The Administration's proposals were recently reintroduced as S. 84, the Federal Debt Collection Procedures Act of 1989. The $5 million appropriation will allow us to upgrade our efforts now by providing resources to cover non-personnel debt collection work, such as auctioneer fees and expenses, costs related to maintaining and protecting property or businesses that have been seized and are to be sold, advertising costs for property sales, title searches, survey costs and costs related to seizures and financial enforcement. This is an interim measure and will no longer be necessary once S. 84 is enacted.

QUESTIONS SUBMITTED BY SENATOR MARK O. HATFIELD

Attorney General

Indochinese Refugee Processing

QUESTION: As you know, I am concerned about reconsideration of all previously rejected Khao I Dang and ration card holder cases. Swift reconsideration is imperative due to flaws in the Ethnic Affairs Officer system that led to indiscriminate rejection of these cases during initial review.

Given that the Thai are threatening to close Khao I Dang and thereby shut off resettlement opportunities to the refugees residing there, what efforts have you undertaken to speed reconsideration of these cases?

ANSWER: The following figures relate to the Border Khmer Parole Program. They represent individual parole requests rather than cases since the program began through December 1988.

	Approved	Denied	Pending
Group I	877	8	23
Group II	72	3	5
Group III	47	134	105

During the first quarter of FY 1989, a procedure was put into place to review those denied Khmer refugee applicants residing in Khao I Dang Camp. This procedure was instituted after discussions with Ambassador Moore. To date, 130 cases have been reviewed by the Joint Voluntary Agency, and 30 have been forwarded to the Office of Refugee and Migration Affairs (RMA) for further consideration. Upon review by RMA, 13 were determined to warrant further review and were approved for presentation to the Immigration and Naturalization Service (INS). Ten cases have been reconsidered by INS. Nine decisions were overturned and the applications were approved. One original decision was upheld, and three are still pending interview by INS.

During the second quarter of FY 1989, there will also be a slight decrease in the frequency of the interviewing trips to Ho Chi Minh City. This decline is due to a significant backlog of approved cases waiting for departure from Vietnam. The problem appears to be on the Vietnamese side as these applicants have all been interviewed and approved by INS or Consular Officers.

Sheridan, Oregon Facility

QUESTION: I understand that the Bureau of Prisons is in the final phase of construction on the new facility in Sheridan Oregon. The dedication should occur this August.

It is also my understanding that room exists on the Sheridan property for future expansion.

Does the Bureau of Prisons have plans for expansion at Sheridan? If so, what is the nature of these plans?

Given the reference in your testimony to the need for an additional Federal prison facility in the West, could Sheridan be used to accommodate this proposed facility? If not, why not?

ANSWER: The site on which the Federal Correction Institution, Sheridan is being constructed consists of 181.5 acres, a site that is considerably smaller than the Bureau of Prisons' preferred site size. Additionally the existing site has several conditions which preclude construction on portions of it. These conditions include approximately 30 acres which are protected from development due to the presence of prehistoric archaeological sites and approximately 50 acres that were committed during environmental impact negotiations with the "1000 Friends of Oregon" as a buffer between the BOP facilities and neighboring land holders. These restrictions along with natural and configuration constraints made it difficult to locate the current facilities on the site. Additionally, the zoning and infrastructure, specifically water and sewer, will not allow for expansion beyond the current facilities.

The development of the correctional complex is a significant departure from the previous Bureau of Prisons' position on the sizing of correctional institutions. This departure is one that is believed to be acceptable in limited situations to provide a more economical means of constructing and operating a correctional facility. These economies are generated by potential savings in the sharing of certain operational functions such as the powerhouse, warehouse, training facilities and administrative areas. The location of a much larger correctional complex will also be predicated on being able to serve the larger population within a reasonable distance of the facility. An attempt to locate such a complex at Sheridan is not compatible in that, in addition to inadequate space, the existing powerhouse and utility systems are not adequate to handle the additional facilities required for a complex. To enlarge these facilities at this time would reduce the economies that can be achieved by constructing a complex. Additionally, a facility of this magnitude would place extreme loads on existing infrastructure resulting in adverse environmental impacts. In reviewing the many complex issues surrounding the possibility of establishing a correctional complex at the existing site at Sheridan, Oregon, it has been determined that the site cannot accommodate a prison complex.

FURTHER QUESTIONS SUBMITTED BY SENATOR HATFIELD

Federal Expenditures

QUESTION: What has been the annual level of Federal expenditures for the United States Attorney and United States Marshal's Offices in Oregon in each of the fiscal years 1981 through 1988?

ANSWER: Expenditures for the United States Attorney's (USA) Office are shown below.

(In thousands of dollars)

Fiscal Year	USA
1988	$3,436
1987	3,352
1986	3,039
1985	2,835
1984	2,584
1983	2,132
1982	1,782
1981	1,741

U.S. Marshals Service (USMS) obligations in the District of Oregon, FY 1981 through FY 1988 are as follows:

(In thousands of dollars)

Fiscal Year	USMS	Support of U.S. Prisoners	Assets Forfeiture Fund*	Total
1988	$1,227	$1,941	$910	$4,078
1987	1,003	1,625	562	3,190
1986	881	1,552	459	2,892
1985	886	1,287	*	2,173
1984	759	821	*	1,580
1983	636	834	*	1,470
1982	747	794	*	1,541
1981	739	502	*	1,241

* The Comprehensive Crime Control Act of 1984 established the Assets Forfeiture Fund

Employment Levels

QUESTION: How many agents/attorneys have been assigned to the above-mentioned offices in Oregon during each of the fiscal years 1981 to 1988? What has been the average turnover rate for individuals filling these positions during this period?

ANSWER: Allocations and turnover rates for the United States Attorney's Office follow.

	Attorney Allocation	Drug Task Force	Vacancies at End of Year
1988	22	1	0
1987	22	1	0
1986	21	1	0
1985	19	1	1 vacancy
1984	19	1	0
1983	17	1	2 vacancies
1982	16	--	1 vacancy
1981	16	--	0

This district was allocated 5 new attorneys as a result of the Anti-Drug Abuse Act of 1988 for FY 1989.

The following chart delineates the number of Federal Bureau of investigation (FBI) agents assigned in Oregon; the number of these agents separated from the organization due to retirement, resignation, removal, or death; and the turnover rate. The transfer of these personnel was excluded from the turnover rate calculation due to the routine and customary occurrence of transfers.

Fiscal Year	Average Number Agents Assigned	Number Separated Employees	Turnover Rate
1988	62	2	3%
1987	60	5	8%
1986	56	2	4%
1985	64	3	5%
1984	61	3	5%
1983	55	1	2%
1982	55	0	%
1981	59	0	0%

The Drug Enforcement Administration (DEA) has offices located in Eugene and Portland Oregon. Since 1981, DEA agents have been assigned to these offices in Oregon as follows: 1981 - 12 agents; 1982 - 12 agents; 1983 - 13 agents; 1984 - 13 agents; 1985 - 15 agents; 1986 - 16 agents; 1987 - 17 agents; and 1988 - 17 agents. DEA does not maintain turnover records for each office; however, DEA's annual turnover rate for agents is 6 percent.

Agency Mission

QUESTION: What is the specific mission or responsibility of these offices in Oregon; how has that mission changed between 1981 and 1988; in what ways is that mission likely to change in the future?

ANSWER: The major mission of the United States Attorney's Office in Oregon is to prosecute as many drug distribution and conspiracy cases as possible. This district ranks third in the nation in the number of methamphetamine laboratories seized. Oregon also ranks third in estimates of the value of domestic marijuana produced, much of which is produced on Federal lands. The Anti-Drug Abuse Act made it possible for this district to hire five new attorneys in FY 1989 to support this mission.

During the years of 1981 to 1988, more and more resources have been used to fight the war on drugs. The State of Oregon, and its wealth of public lands, attracts a large number of drug users, drug producers and drug growers.

Further, in the years to come a stronger effort is planned in the asset forfeiture area. A full-time attorney and two part-time positions are allotted solely to asset forfeiture cases at the present time, and more will be needed in the future.

The Marshals Service mission in Oregon, and nationwide is to maintain the integrity of the judicial process. This includes protecting any and all judicial participants (judges, attorneys, witnesses and prisoners) during every step in the process, from initial arrest to final disposition of the case.

While the mission remains constant, the circumstances surrounding its successful performance have changed markedly. Anti-crime initiatives such as the Organized Crime Control Act of 1984, and the Anti-Drug Abuse Acts of 1986 and 1988 spearheaded this change. They did so by targeting a new breed of defendants, international drug dealers, who, with terrorists and organized crime figures, require the extensive detention and protection measures that bail and sentencing reform provide, as well as the full use of asset seizure provisions.

A few examples illustrate how these initiatives affect Oregon.

-- Last year asset seizures conducted in that district were more than four times the 1986 level.

-- The average number of prisoners in Marshals Service custody in Oregon jumped from 40 in September 1986 to 111 in February 1989.

-- Prisoner productions are up from 180 a month in 1987, to 230 a month during the first half of 1989.

The mission of the FBI is to investigate violations of Federal criminal law; to protect the United States from hostile intelligence efforts; to provide assistance to other Federal, State, and local law enforcement agencies; and to perform these responsibilities in a manner that is faithful to the Constitution and the laws of the United States.

The FBI's mission is maintained by all FBI field offices. The primary change in the FBI's mission since 1981 is that it has assumed concurrent jurisdiction for drug investigations (21 U.S.C.) with DEA. This change took place by

Attorney General Order in January 1982. No change in the FBI's mission is expected.

DEA's nationwide mission is to investigate and arrest major drug violators, identify and seize drug evidence and non-drug assets used in or derived from the proceeds of the drug trafficking activities of individuals and organizations, reduce domestic production and cultivation of illicit drugs and assist Federal, State, and local law enforcement agencies involved in the fight against illegal drug production, cultivation, and trafficking. In Oregon the mission has changed slightly since 1981 as more time and effort is now directed toward clandestine laboratory activities. No specific changes are anticipated in the near future.

Forfeiture Seizures

QUESTION: How much in equitable sharing from forfeitures has Oregon received (displayed by calendar of fiscal year) since the inception of the program?

ANSWER: Oregon, as an active participant in coordinated law enforcement efforts, received the following amounts from the forfeiture of cash and from the sale of forfeited property since the inception of the program:

FY 1986 - $200,218
FY 1987 - $426,979
FY 1988 - $869,866
FY 1989 - $419,403 (through February 1989)

Methamphetamine Labs

QUESTION: Has Oregon received its allocation for expenditure of funds from the Department for methamphetamine lab seizure assistance as was provided by Congress in FY 1989?

ANSWER: In the Conference Report (H. Rpt. 100-979) accompanying the Department's 1989 appropriations act (P.L. 100-459), the conferees agreed that $510,000 of discretionary Anti-Drug Abuse Grants would be available for attacking clandestine drugs labs in the Portland, Oregon metropolitan area. The application has been received by the Bureau of Justice Assistance and is proceeding through the regular grant review process. The grant should be awarded within the next thirty days.

In addition, Title II, Section 2405 of the Anti-Drug Abuse Act of 1988 called for the establishment of a joint Federal Task Force for the protection of public health with respect to illegal drug laboratories. DEA and the Environmental Protection Agency have established the task force, and have developed draft guidelines for the disposal of hazardous waste also required by the Act. Based on the current timetable of events, funding of demonstration projects will begin in FY 1990. Law enforcement officials in Oregon will be fully informed as to the guidelines and demonstration project process.

Regional Information Network

QUESTION: On what basis did the Administration decide NOT to seek money in FY 1990 for the Regional Information Sharing Network?

ANSWER: Since 1980, Congress has provided $90 million for the Regional Information Sharing Systems (RISS) program. Although the program is an effective tool for State and local law enforcement agencies, the scarce resources available for the Department are not enough to fund every worthwhile program. Given the state of the Federal budget, it is important that we devote available resources to criminal justice system responsibilities at the Federal level.

QUESTION: What Federal agencies, other than the Customs Service, participate in the Western Interstate Information Network?

ANSWER: Other Federal agencies that participate in the Western States Information Network are:

Air Force - Office of Special Intelligence
Army - Criminal Investigations Division
Bureau of Alcohol, Tobacco and Firearms
Department of Justice - United States Attorney Federal Financial Drug Task Force (Sacramento)
Bureau of Indian Affairs
Bureau of Land Management
Coast Guard
Drug Enforcement Administration
Federal Aviation Administration
Federal Bureau of Investigation
Agriculture - Forest Service
Immigration and Naturalization Service including the Border Patrol
Internal Revenue Service
United States Marshals Service
National Park Service
Navy - Naval Investigations
National Narcotics Border Interdiction System
United States Courts - Parole and Probation
Postal Service
Secret Service

QUESTION: Why are the FBI and DEA NOT active participants in the RISS program?

ANSWER: There are ten FBI offices and thirteen DEA offices that are active participants in the RISS program on a regional basis. In addition, FBI and DEA co-sponsor training and technical assistance activities with individual RISS projects, and actively participate in multi-jurisdictional task forces on many project-supported investigations. Information collected by the DEA, FBI and other investigative agencies is also made available, upon request, to projects throughout the RISS network.

Emerging Criminal Groups

QUESTION: What is the FBI doing in the area of emerging criminal groups, specifically youth gangs, in Oregon? What recommendations came out of the conference last July in Kansas City to address the problem of youth gangs, as it might apply in Oregon?

ANSWER: The Crips Youth Gang, in conjunction with other street gangs, was identified as an influence in drug trafficking in the Portland area during 1987. The gang has quickly established itself as a major manufacturer and distributor of crack cocaine. The organization is extremely violent and has been involved in numerous drive-by shootings, assaults, robberies and homicides. The Crips and other street gangs are currently being addressed by a 60-officer Gang Task Force. However, the FBI is not currently conducting investigations regarding youth gangs because of its commitment of drug resources to major investigations, principally Mexican drug trafficking organizations, and because a significant local effort is underway concerning these groups. Nonetheless, the FBI does provide intelligence information to the Gang Task Force and continues to monitor emerging youth gangs to assess if they are significant multi-jurisdictional drug traffickers. In addition, DEA has some specific initiatives that are aimed at drug violence, especially drug gang violence. These include Special Enforcement Operations dealing with the Bloods and Crips gangs, as well as Jamaican posses. Also the Community Relations Service (CRS) has provided assistance in cases relating to youth drug gangs moving into the Seattle, Washington and Portland, Oregon areas. Concerned community leaders have contacted CRS to set up training seminars, consultations and discussions to help the communities handle these situations.

Should these gangs develop into major suppliers/ distributors of illicit drugs and the threat they pose is beyond the capabilities of the Gang Task Force due to its multi-jurisdictional nature or otherwise, the FBI will reexamine its current commitment of resources in Oregon.

In November of 1988, the Portland Field Office of the FBI initiated an investigation into the activities of a right-wing Neo-Nazi group in Portland, Oregon, known as the Skinheads. This preliminary investigation was opened following the beating death of an Ethiopian man outside his Portland apartment. Three members of the Skinheads organization, who were arrested and charged with the murder of the man, are scheduled to go to trial this month. A Civil Rights investigation has been opened and efforts are underway to determine if the murder was committed at the direction and furtherance of the group's goals and beliefs. Since the incident, six cases have been opened. In addition, the FBI is remaining alert to the illegal activities of the Skinheads and their possible link to white-supremacist domestic terrorist organizations.

The conference in Kansas City in July 1988 recognized the nationwide impact emerging youth gangs are having. Following up on this meeting, the FBI made a commitment to establish a nationwide intelligence base on emerging Los Angeles-based Bloods and Crips street gangs. The FBI has also committed to the use of court-authorized electronic surveillance and sustained investigations on the ranking organizational members and their suppliers. These activities are being coordinated by the FBI's Los Angeles Office. Additionally, each field office was asked to conduct a threat assessment following consultation with United States Attorneys and State and local law enforcement officials. FBI Headquarters submitted an investigative plan/role to the Acting Associate Attorney General for the FBI to address Bloods and Crips gangs. This document identified ongoing efforts and commitments the FBI has made concerning the street gang problem.

Sheridan Prison

QUESTION: Has construction been completed on the minimum security facility in Sheridan, Oregon? What is the final level of expenditures to complete that facility? When will inmates occupy the facility? What is the total number of minimum and medium security inmates that will occupy the complex? Might bed space on the grounds be available to temporarily house State inmates?

ANSWER: The camp at Sheridan is complete with the exception of the food service building which is scheduled for completion around May 1, 1989. We plan to accept inmates at the camp in the latter part of May. Projections are that the main institution should be completed in June, with inmates projected to begin arriving in late July.

The Sheridan facility will be a 550-bed medium security institution with a 250-bed minimum security camp outside the secure perimeter fence. The current funding is $48,720,000.

Projections indicate that bed space for housing State inmates would not be available at Sheridan. As you know, the Federal Prison System is operating at 52 percent above the rated capacity. This situation is particularly acute in the western region where we have six medium security facilities, each of which are operating at 69 percent above their rated capacity. The additional capacity created by the activation of the Sheridan facility will reduce the current level of overcrowding in the western region to 55 percent.

Coordinated Programs

QUESTION: Coordination among the host of Federal law enforcement agencies and State and local crime officials is critical to maximizing scarce financial resources as well as assuring maximum enforcement capabilities across multiple jurisdictions. Please identify any other existing program(s) or sub-activity, and corresponding funding levels, which are designed to enhance Federal, State, and local coordination.

ANSWER: Law Enforcement Coordinating Committees - In 1981, the Attorney General's Task Force on Violent Crime specifically recommended that each United States Attorney establish a Law Enforcement Coordinating Committee (LECC).

Today, each of the 93 United States Attorneys has a Law Enforcement Coordinating Committee in place, consisting of Federal, State and local agencies involved in district law enforcement. The goal of these committees is to improve cooperation and coordination among law enforcement groups and thereby enhance the effectiveness of the criminal justice system. To encourage individual districts to develop active programs in this area, each United States Attorney Office has been given an allowance of $4,000 to fund LECC-sponsored activities. These allowances were created in FY 1989 and may be adjusted in future years depending on individual district activity. The fund source is the United States Attorneys' Criminal Litigation program. The money is used to pay for travel, supply printing, and conference room rental expenses necessary to run a successful program.

One of the most successful tools in encouraging the cooperation of Federal, State, and local law enforcement agencies has been much-needed training sponsored by the LECC in each United States Attorney's district dealing with such topics as asset forfeiture, child pornography, narcotics enforcement, search and seizure, fraud investigations and victim-witness assistance. Each office provides training in close proximity to State and local agencies, thereby eliminating prohibitive travel expenses, while addressing specific needs of area law enforcement. These training sessions often lead to the development of joint operational activities, such as task forces. In short, LECC training is inexpensive and high quality, benefiting all involved.

The Marshals Service promotes cooperation and coordination among law enforcement agencies at all levels of government through many of its programs.

The equitable sharing program administered by the United States Marshals Service (USMS) promotes cooperation and coordination among Federal, State and local law enforcement agencies. Equitable sharing payments represent the partitioning of forfeited property between the Federal Government and participant State and local law enforcement according to the relative level of effort provided in the underlying criminal investigation and seizure. Gross amounts realized from forfeitures of cash and disposal of forfeited property are first deposited to the Assets Forfeiture Fund, and then payments are made.

In addition to the almost $77 million in payments to State and local law enforcement agencies made in FY 1988 under the Attorney General's equitable sharing authority [19 U.S.C. 1616(a), 21 U.S.C. 881(e)], and the Attorney General's Guidelines on Seized and Forfeited Property, the equitable sharing program, initiated at the end of FY 1985, resulted in $17.1 million in cash payments made to State and local law enforcement agencies in FY 1986, and $46.8 million in equitable sharing payments in FY 1987.

Marshals Service investigators routinely work with State, local and other Federal agencies -- and often foreign governments -- to locate and apprehend fugitives. Some programs have been established by the Marshals Service to enhance agency coordination such as Warrant Apprehension Narcotics Team operations and other special operations focusing on one or more fugitives. The Marshals Service also supports the Organized Crime Drug Enforcement Task Forces through a commitment of personnel at all thirteen locations.

The Witness Security Program provides services to State or local law enforcement agencies by providing protection and maintenance to protected witnesses, either for full program services, or for producing witnesses temporarily for testimony. Reimbursement for expenses are requested by the USMS; however, final determination and approval for reimbursement is the decision of the Criminal Division, Department of Justice.

The Marshals Service's National Prisoner Transportation Service is one of the most valuable resources available to the law enforcement community because it transports large numbers of dangerous prisoners safely, within court-ordered deadlines, and at a fraction of the commercial cost. This service is also provided to State governments on a reimbursable basis when space is available.

The Court Security Program sponsors specialized training programs in all facets of Court Security which are made available to State and local law enforcement agencies and foreign governments. In addition, Court Security personnel conduct special security surveys for other agencies' court facilities, as well as provide technical expertise on a case-by-case basis. Finally, the Division's physical security specialists serve as national points of contact on the latest and most effective physical security systems available to State and local agencies.

In addition to Court Security training, the Marshals Service provides classes for State and local law enforcement areas such as marksmanship, organizing tactical units, assaults and barricades, and operational planning. All training of State and local officers by the Service's Special Operations Group is provided on a fully reimbursable basis.

Through the Cooperative Agreement Program (CAP) of the Support of U.S. Prisoners Appropriation, the Marshals Service works in cooperation with State and local governments in a nationwide effort to provide adequate detention space for unsentenced Federal prisoners. By providing funding through CAP agreements, the Service encourages State and local governments to renovate or construct detention facilities in exchange for guaranteed jail space availability for Federal prisoners.

The Community Relations Service (CRS) provides assistance in the form of service to communities in resolving disputes, disagreements and difficulties arising from discriminatory practices based on race, color or national origin. Trained conciliators and mediators are available to assist school systems, colleges and universities, police agencies and local governments is resolving conflict situations. In addition, technical assistance, including on-site expert assistance, special research and development and dissemination of model programs are made available to communities. Resources committed to these efforts total $5.7 million in 1989 and $6.3 million in 1990.

The following FBI programs are designed to or have the effect of enhancing Federal, State and local coordination.

Laboratory Division - The FBI Laboratory assumes a leadership role in forensic science in the United States and provides a wide variety of training and services to Federal, State and local law enforcement agencies. Laboratory programs which are specifically designed to enhance Federal, State and local coordination include: (1) the American Society of Crime Laboratory Directors; (2) the Forensic Science Operations and Program Committee; (3) the Forensic Science Information Resource System; (4) Forensic Science Research; (5) Forensic Science Training; (6) Visiting Scientist Program; (7) International Symposia; (8) Examination of Physical Evidence; (9) Deoxyribonucleic Acid (DNA) Examinations. Funding for these and other similar initiatives is provided through the Forensic Services - Non-Federal Program. The 1990 request for this program is 111 positions and $9,675,000.

Training Division - A significant portion of the FBI's training mission can be interpreted as an effort to maximize scarce financial resources of Federal, State, and local law enforcement agencies as well as assuring maximum enforcement capabilities across multiple jurisdictions. Training provides such coordination benefits for all participating agencies. Specific examples of existing programs or sub-activity in the FBI's Training program are as follows: (1) general law enforcement training; (2) the National Center for the Analysis of Violent Crime; and (3) an interagency agreement with the Bureau of Justice Assistance to provide training to State and local law enforcement on the financial aspects of narcotics investigations. Funding for these and similar initiatives is provided through the General Law Enforcement Training Program. The 1990 request for this program is 278 positions and $19,882,000.

Organized Crime Drug Enforcement - The FBI provides continuing assistance to Federal, State and local law enforcement agencies in joint investigations that are not Organized Crime Drug Enforcement Task Force (OCDETF) investigations. The FBI shares responsibility with State and local law enforcement agencies to respond to drug problems that are unique to a local area or region, but which are multi-jurisdictional in scope. Nearly 80 percent of FBI drug investigations involve the participation of other enforcement agencies, both in and out of the OCDETF arena. A total of 637 positions and $51,589,000 is proposed to be transferred to the Organized Crime Drug Enforcement appropriation in 1990. These resources will be provided to the FBI on a reimbursable basis to support its OCDETF activities.

Violent Crimes & Major Offenders program - Virtually all violations within the Violent Crimes and Major Offenders Section share concurrent jurisdiction with State and local authorities. Most cases are, in fact, joint operations with no special funding available. Task forces use actual case funds to finance their operation and are composed of the FBI and State and/or local police agencies.

White-Collar Crime program - The White-Collar Crime program routinely coordinates its criminal investigations with appropriate Federal, State, and local agencies both law enforcement and regulatory. To a large extent, where feasible, joint investigative endeavors are initiated in both overt and covert investigations. The White-Collar Crime program has no retrieval mechanism to capture the cost of personnel funding especially designated for local, State, and Federal coordination.

Joint Terrorism Task Forces - The FBI has established several Joint Terrorism Task Forces (JTTFs) with other law enforcement agencies to support investigations involving terrorist groups. The office space and equipment used for these task forces are provided by the FBI. Overtime for the local law enforcement personnel is also paid for by the FBI. Currently, there are approximately 130 FBI agents and 10 FBI support personnel working on these JTTFs. Further, the FBI is authorized to provide up to $500,000 to State and local law enforcement agencies while engaged in cooperative activities related to terrorism.

Organized Crime Task Forces - The FBI's Organized Crime program is firmly committed to conducting coordinated investigations in which the synergism resulting from the combining of intelligence and personnel resources is maximized. The Organized Crime program typically accomplishes this via task force investigations. Organized Crime Task Forces are currently operating in eleven field offices, contributing up to 121 additional investigators.

Fingerprint Identification - The FBI's Fingerprint Identification program has continuously sought methods to enhance Federal, State, and local coordination. In August of 1988, the FBI sponsored a State Liaison Conference to determine how the FBI could improve the services provided to the States. The following automation projects are being designed to improve the services provided to the criminal justice community.

The Automated Identification System (AIS) currently scheduled for full implementation in Spring 1989, will combine all of the Fingerprint Identification program's automation achievements into a fully-integrated, high performance system. Additionally, AIS will allow the FBI to support the Interstate Identification Index. The present work-processing time is incompatible with the rapid on-line computer inquiry and response requirements of the Federal/State cooperative effort to decentralize to the States the responsibility for the recordkeeping and interstate exchange of their own records.

The FBI provides fingerprint identification services to State and local law enforcement agencies at no charge.

DEA is involved in a number of activities designed to enhance Federal, State, and local cooperation. These activities include:

State and local training ($3.2 million) - Annually, DEA provides training at the FBI Academy to State and local law enforcement officers in basic instruction classes and supervisory officer's school. In addition, State and local officers receive drug enforcement training conducted at DEA field offices. In total, DEA trained over 7,200 State and local law enforcement officials in 1988.

State and local task forces ($32 million) - This program is a cooperative approach to drug enforcement which has aided State and local governments. Currently, there are 44 fully funded task forces and 12 provisional task forces in the program conducting high-level drug investigations while providing an excellent forum for exchange of intelligence.

State and local laboratory assistance ($2 million) - The DEA laboratories provide training and publish technical information to assist State and local laboratories in achieving self-sufficiency. Additionally, DEA chemists provide quantitative and qualitative analysis of drug evidence for those agencies that do not have the required expertise or facilities.

Organized Crime Drug Enforcement (OCDE) Task Forces ($68.4 million reimbursed) - DEA continues its extensive participation in the OCDE program promoting a coordinated drug enforcement across all levels of government. A key example of this cooperative effort is the deputation of State and local law enforcement officials when appropriate. This provides non-Federal agencies with the capacity to extend investigations outside their normal jurisdictions.

Domestic cannabis eradication/suppression program ($3.2 million) - through this program DEA oversees a coordinated effort between Federal, State and local agencies involving the eradication of domestically cultivated cannabis in the United States. DEA's role in this cooperative venture is to encourage State and local eradication efforts and to contribute funding, training, equipment, investigative and aircraft resources to support such efforts.

DEA also coordinates investigations with other Federal, State, and local agencies as necessary on a case-by-case basis, and participates extensively in the International Association of Chiefs of Police.

The Federal Prison System (FPS) contracts for the housing of certain categories of Federal offenders in State and local facilities, as well as in private facilities. This group includes persons committed under the Federal juvenile statutes who must be separated from adult offenders and placed in community-based facilities whenever possible; adult offenders whose lives might be endangered in Federal facilities (protection cased); offenders with short sentences (generally 180 days or less) who are placed in local detention facilities for service of sentence; and those offenders who are placed in community treatment centers that are run by a State, a locality or a private facility. In 1990, FPS expects to have approximately 820 contracts for these types of services.

In addition, FPS maintains a reimbursable agreement with various States that use FPS facilities to house their State prisoners. FPS is reimbursed for the costs it incurs for the custody and care of these State inmates.

The Office of Justice Programs and the Bureau of Justice Assistance (BJA), co-sponsored with the Department of Education and Health and Human Services, a series of three conferences, each designed to serve as a forum for State-level policy makers in the drug prevention, education, treatment and enforcement fields. Information was exchanged about research and effective programs that have been implemented at the Federal, State and local levels to reduce the demand for and supply of illegal drugs. The conferences provided the States with an opportunity to formulate action plans for the development of a comprehensive drug strategy addressing both demand and supply, joint program planning and the interdisciplinary resolution of issues and problems.

As part of the BJA Discretionary Grant Drug Law Enforcement Strategy, a number of multi-jurisdictional operations have been funded ($10 million in 1987 and $2.7 million in 1988). This is one of the most important enforcement strategies being implemented. Recognizing that drug trafficking organizations are sophisticated and highly mobile, crossing jurisdictional boundaries, these task forces provide an equally sophisticated response. Through multi-jurisdictional efforts, participating agencies can leverage their limited resources to operate more efficiently and effectively. BJA has funded Organized Crime/Drug Trafficking Task Forces in 20 major cities throughout the country, which target investigative and prosecutorial resources on high level drug offenders. The multi-jurisdictional operations concept is also being demonstrated as an effective approach to addressing specific drug control problems, such as the spread of crack, pharmaceutical diversion and clandestine laboratory enforcement.

At the sub-grant level, States are finding the multi-jurisdictional task force concept an effective enforcement strategy and are supporting these efforts with Anti-Drug Abuse Formula Grant funds. Many of the State-funded task forces include the active participation of Federal agencies. The task forces facilitate the effective targeting and sharing of personnel, equipment and intelligence information, and represent one of the best examples of multi-level coordination. There are approximately 700 State funded task forces in existence. In 1987, approximately $107 million was allocated for their operation, and in 1988, $33 million was allocated. Funding information is not yet available for 1989.

BJA also administers the Regional Information Sharing System (RISS) program. This program consists of seven multi-State projects that facilitate regional criminal information exchange and provide other related support services to Federal, State and local law enforcement agencies throughout all fifty States. The RISS projects enhance the ability of criminal justice agencies to identify, target, investigate and prosecute multi-jurisdictional drug trafficking, organized crime and white collar crime. Although funding for the RISS program was not requested by the Department for 1990, in both 1987 and 1988 $12 million was provided. In 1989, $13 million was provided for RISS projects.

QUESTIONS SUBMITTED BY SENATOR BOB GRAHAM

Attorney General

Immigration and Naturalization Service

QUESTION: Does the Administration believe the Federal Government should take financial responsibility for costs incurred by communities in dealing with a large influx of aliens applying for asylum?

ANSWER: The executive branch has no authority to reimburse State and local governments for costs arising from large or small influxes of aliens applying for asylum. In South Texas, Miami, and Los Angeles, INS is trying to process asylum applicants as rapidly as possible to separate the meritorious asylum-seekers from those migrants who are taking advantage of the asylum system to secure employment authorization and establish roots in a community within the United States. Aliens granted asylum are eligible for refugee entitlement, and State and local governments may receive 100 percent Federal reimbursement for cash and medical assistance provided to asylees.

In 1980, legislative actions provided refugee entitlements to Cuban-Haitian asylum applicants. These entrants, whether or not they received asylum, were counted in the formula for refugee impact aid to State and local governments.

Where aliens have been denied asylum and detained pending expulsion hearings, INS is authorized to pay for food, shelter, and needed medical care while these aliens are in INS custody.

QUESTION: Is this the premise of the new policy now being implemented in South Texas to deal with the influx of aliens from Central America?

ANSWER: The premise of the Asylum Action plan being followed by INS and the Department of Justice in South Texas is that asylum claims should be handled as promptly as possible and illegal migrants detained so that they do not become a burden on local communities.

Once applicants are granted asylum, they become eligible for refugee benefits. State and local governments providing these benefits will be fully reimbursed by the Federal Government for the first twenty-one months after an asylee gains lawful status.

The enforcement actions taken by INS are meant both to discourage aliens with spurious asylum claims from attempting illegal entry to the United States and to minimize their impact on local communities by detaining them and providing custodial care at Federal expense.

QUESTION: **It is my understanding that the new policy will provide additional personnel and resources in South Texas to provide for quick turnaround on asylum applications. During the application and appeals process, the Federal Government will assume the responsibility of caring for the applicants in cooperation with volunteer groups. Is this an accurate summary of the plan?**

ANSWER: In Harlingen, Texas, additional resources have been added whereby we have been able to reduce the processing time for the average asylum application to one day without diminishing the quality of work. An officer from the Bureau of Human Rights and Humanitarian Affairs is onsite to give immediate advisory opinions that previously took 30 or more days to obtain.

While an application is before the District Director for a decision, the Department of Justice has the authority to provide shelter, food and other assistance to aliens who are applicants for asylum but are being detained pending the outcome of the review of their applications. Once granted asylum, aliens qualify for refugee entitlement and social services provided by State and local government through a reimbursable agreement with the Federal Government. When aliens are detained and placed in deportation proceedings, INS is authorized to provide food, shelter and medical care to persons who are held in its custody. Aliens initially apprehended and arrested by the Border Patrol after illegal entry to the United States receive such custodial care. Similarly, when asylum applicants in the INS Harlingen district are denied, the applicants are issued an Order to Show Cause why they should not be detained and deported. Denied applicants are detained at the service processing center in Port Isabel, Texas, other service or contract detention facilities, or, in the case of family groups, a facility operated by the Red Cross under contract with the Community Relations Service of the Department of Justice.

QUESTION: **Is there not a parallel situation in South Florida, where as many as 20,000 Nicaraguan applicants for asylum have settled? What plan does the Federal Government have for sending additional personnel to South Florida to reduce the backlog of asylum applications and to assume the responsibility for these people as you are now doing in South Texas?**

ANSWER: South Florida has a large population of Central Americans. Many of these entered illegally across Texas' southern border. On January 3, 1989, a detail of 20 specially-trained personnel arrived in Miami to handle backlogs created by this large influx of Central Americans and allow new asylum applicants to be rapidly processed and interviewed. This group of personnel was complemented by appropriate support staff and equipment. INS plans to continue this effort for at least six months. Additional resources may be added as the backlogs in other areas of the country decrease.

QUESTION: With respect to this new asylum policy in Texas, what do you expect to be the cost of the operation and from what source will the money be drawn?

ANSWER: INS estimates that the care and processing of these applicants will cost in excess of $20 million for the remainder of FY 1989. The resources will be used to fund a reimbursable agreement with CRS, that will provide food, shelter and medical services. Additional expenses will support the details and related costs of Border Patrol Agents, Detention and Deportation Officers, Immigration Examiners and other INS personnel essential to the project. Initial funding will be accomplished using existing resources from INS's Detention and Deportation program.

QUESTION: Do you expect the new policy in Harlingen will divert the alien flow to other points along the border and, if so, what efforts are being taken to shore up enforcement along the border?

ANSWER: An aggressive intelligence-gathering effort by INS is assessing the impact of the new policy in Harlingen. We are closely monitoring the possibility that the strong deterrence in the Harlingen area may divert some of the aliens to other points. If there is evidence that the flow of aliens across the border has shifted, INS can mobilize Border Patrol resources, agents and equipment, along the border to counteract any changes. A strong, temporary enforcement response along the border can be mounted very quickly by using detailed agents to shore up permanent resources.

QUESTION: I introduced a bill (S.441) that would give the Attorney General the authority to release up to $20 million from an Immigration Reform and Control Act (IRCA) Immigration Emergency Fund without the need for an emergency declaration. Since the fund has not yet been established, FY 1990 appropriations will be needed for this purpose. Does the Administration have a position on this approach or the use of the Emergency Fund in general?

ANSWER: In our estimation, the problems in the Harlingen District can be satisfactorily handled with existing resources. In addition, the situation there has not been critical enough to warrant the Attorney General to request the assistance of State and local agencies. Thus, we see no need in seeking the emergency funding provided for in IRCA.

QUESTION SUBMITTED BY SENATOR BARBARA A. MIKULSKI

Attorney General

Plan for Cumberland, Maryland Site

QUESTION: Attorney General Thornburgh, I am pleased to see that you have put such a high priority on prisons in this war on drugs that this nation is currently waging, and I congratulate you on your efforts. As you have realized, it does no good to spend all this money in trying to get the drug pushers off the streets unless we have someplace to put them in jail. While I see that in the FY 1990 President's budget request, you have requested additional prison funds, I would like to ask you about your plans with the money which was authorized and appropriated in the Anti-Drug Abuse Act of 1988.

Out of the $95.6 million appropriated for prisons in the Anti-Drug Act, I understand that the Bureau of Prisons has told the Office of Management and Budget that they intend to use $58.1 million to construct a Federal Correctional Institute in the northeast region. Could you tell me precisely what your plan is for the Cumberland, Maryland site, where the Bureau of Prisons is currently conducting an environmental impact study, in connection with the $58.1 million?

What is the time frame for decisions to designate a site for the Northeast?

ANSWER: The Bureau of Prisons has plans to construct a Federal Correctional Institution in the Northeast with funds from the 1988 Anti-Drug Abuse Act. The site in Cumberland, Maryland is currently the subject of an environmental study that should be completed by June 1989. Barring any unforeseen difficulties with this review, this site could be selected at that time as the site for the 1988 Anti-Drug Abuse Act funded facility.

QUESTIONS SUBMITTED BY SENATOR ALFONSE M. D'AMATO

Attorney General

Immigration and Naturalization Service

QUESTION: The FY 1990 budget request for the Organized Crime Drug Enforcement Task Force (OCDETF) Program seeks an increase of $8.045 million for 94 reimbursable positions (including 75 criminal investigators) and 48 reimbursable workyears to allow the INS to provide continuing support to the OCDETF program and participate more effectively in major interagency drug and organized

crime investigations. Can you explain to this Committee in more detail why this enhancement is so important? Can you furnish us with a statistical report and case summaries demonstrating the significance of INS participation in OCDETF to date? It is my understanding that such a report and summaries were furnished by INS to the OCDETF program in recent weeks.

ANSWER: On December 23, 1986, then Deputy Attorney General Arnold I. Burns approved the implementation plan which allowed the INS to become a formal participant in OCDETF. The philosophy of the Task Forces from their inception has been that an agency's participation should not detract from the other aspects of its mission. A recent audit of the Task Forces by Aurora Associates, a private contractor, has concluded that INS has made significant contributions to this important effort. INS has long been involved in the Administration's war on drugs. We believe that the INS accomplishments justify formal budget recognition and continued operational participation.

The Investigations Division is the interior enforcement arm of the Immigration and Naturalization Service. The participation of INS Special Agents in OCDETF is indicative of a more extensive investigations effort against alien involvement in all types of criminal activity. Increased emphasis is being placed on administrative action and criminal prosecution of aliens who have committed major criminal offenses and, in particular, on criminal alien organizations involved in narcotics trafficking, firearms offenses, subversion, terrorism and other serious, violent, and criminal acts.

In FY 1988, INS agents apprehended 662 criminal aliens involved in illegal drug activities that were investigated under OCDE initiatives. Drug case related seizures and forfeitures included: $9.7 million in currency, 184 vehicles, 714 weapons, 1,996 kilograms of cocaine, 2,589 vials of "crack", 145 pounds of heroin, 65,247 pounds of marijuana, and 50 pounds of amphetamines. The street value of these drugs was estimated to be $119.5 million.

During the period of January 1, 1988, through November 30, 1988, INS agents participated in 157 OCDE investigations formally accepted by the OCDE coordinating group. To date, INS has been designated as the lead or co-lead in 48 accepted OCDE Task Force cases. In regard to your request for pertinent case summaries, the Committee has been provided three internal publications that address the overall issue of an expanding criminal alien problem. This information describes our current approaches to the criminal alien problem through such mechanisms as OCDETF. Within the context of OCDETF, INS and the Bureau of Alcohol, Tobacco and Firearms (BATF) have initiated major national efforts against Jamaican organized crime. These Jamaican criminal organizations are believed to have contributed substantially to the tremendous increase in violent crime in our Nation's Capital and many other cities throughout the country.

QUESTION: The request for an increase of $8.045 million is submitted by the Department of Justice to compensate the Investigations Division of INS for those special agents currently dedicated to the OCDETF program. Considering that this proposed increase is intended as a reimbursement to the INS Investigations program's base budget, what plans do you have to ensure that if these funds are appropriated, such funds will be used to increase INS's participation in OCDETF?

ANSWER: The Immigration Reform and Control Act of 1986, the Anti-Drug Abuse Act of 1986 and the Anti-Drug Abuse Act of 1988 have required the Investigations Division to remove criminal alien narcotics traffickers from the streets of America, facilitate their expeditious deportation hearings while maintaining procedural safeguards, and prevent their reentry into the country. While these pieces of legislation have provided INS Special Agents with the tools to meet this challenge, the Investigations Division has formulated national programs to ensure full utilization of these tools. One such program is OCDETF, while another is the Alien Criminal Apprehension Program (ACAP).

As evidenced by the statistics provided in answer to your first question, INS participation in OCDETF as a proactive initiative has been successful. INS currently has 106 Special Agents assigned to the Task Force as either coordinators or field supervisors. An enhancement of personnel would be in keeping with my priority to conduct an all-out war on narcotics and dangerous drugs.

In 1990, I will be the manager for the Organized Crime Drug Enforcement appropriation. Participating agencies will be required to document expenses that are dedicated to OCDE Task Force cases. This process will be closely monitored by the Department officials selected for that task.

QUESTION: Section 6151 of the 1988 Anti-Drug Abuse Act authorizes $8,200,000 to increase the commitment of INS personnel to OCDETF "for additional special agent and support positions; and for associated training and equipment; and for costs incurred during INS agent participation in OCDETF operations with other Federal, State and local law enforcement agencies." Section 6151 further authorizes that such an enhancement be accomplished through a four-city pilot program. What plans do you have to implement this four-city pilot program?

ANSWER: The Investigations Division formed a team on November 18, 1988, to implement the new responsibilities imposed by the Anti-Drug Abuse Act of 1988. The team is largely composed of field supervisors and agents in order to ensure that operational realities are fully considered during the development of the implementation plans. To date, the implementation team has developed an extensive package that includes draft regulations and operating instructions for implementing provisions such as the OCDETF four-city pilot program. At present, I understand this draft package is being circulated within INS management for review and comment.

QUESTIONS SUBMITTED BY SENATOR PETE V. DOMENICI

Attorney General

Immigration and Naturalization Service

QUESTION: Attorney General Thornburgh, in the FY 1990 budget justifications for the Immigration and Naturalization Service (INS), I note with concern that the Border Patrol is slated for a reduction below the FY 1990 base of $10.7 million and 552 permanent positions below those in place this fiscal year. How can the mission of the Border Patrol to deter and prevent illegal entry into the United States and interdict drug smugglers and other criminals between our ports of entry be sustained with this proposed cutback in the number of agents currently deployed by INS?

ANSWER: The Border Patrol will continue its primary mission to control the border between the ports of entry with any and all resources made available. New and innovative enforcement techniques to accomplish this task will be used.

The Border Patrol will continue to prevent illegal entry across the border and interdict and apprehend drug smugglers and other criminals by using a number of border enforcement strategies. The Patrol will maintain its highly effective drug interdiction efforts though the continued use of mobile interdiction operations. These mobile operations are extremely successful in responding to the changing narcotics trafficking patterns by using detailed agents and overtime staffing in conjunction with other Federal, State, and local law enforcement agencies. In addition, the Patrol will shift resources when required, from areas that are experiencing consistent decreases in attempted illegal entries along the border to those areas that need additional border enforcement. The effectiveness of Border Patrol agents has also been increased with the use of canines in the detection of aliens and narcotics being smuggled into the United States. The canine program will be expanded due to its tremendous success in the detection and seizure of drugs at the traffic checkpoints along the border. Other on-going border enforcement enhancements include the upgrading and expansion of border surveillance equipment such as infrared night scopes, low light level camera systems and ground sensor equipment. These detection devices will enable Border Patrol agents to perform their mission with greater effectiveness when used in concert with other border enforcement strategies.

As a result of recent agent staffing increases, the Patrol has hired up to the maximum extent possible under its present budget. This staffing level has ensured the increased apprehensions of criminal aliens, narcotics and alien smugglers, and the enforcement of employer sanctions laws along the border. Illegal alien apprehensions have steadily decreased due to the initial build-up of agents and their deterrent effect combined with the sanctions enforcement in the border communities.

The Border Patrol will continue to experience increases in the interdiction of drugs and the apprehension of criminal aliens and smugglers with the lower agent force by using the alternative border enforcement strategies.

QUESTION: How many Border Patrol agents do you currently have deployed in the major southwestern border States of Arizona, New Mexico, Texas, and California?

ANSWER: The Border Patrol does not normally maintain on-duty force statistics by State because of the overlapping geographical jurisdiction of Border Patrol Sectors. However, there are presently 3,586 Border Patrol agents on duty in the combined States of Arizona, New Mexico, Texas, and California. Of that total, 435 are agent trainees on detail to the Border Patrol Academy in Glynco, Georgia. All of the agent trainees will have been graduated from the academy by June 1, 1989 and will be assigned to the field. The number of agents assigned to stations located in a particular State is not the primary indicator of the enforcement coverage provided by the Patrol within a certain State. As an example of the overlapping jurisdictions, agents stationed in Texas perform patrol activities in New Mexico and agents stationed in Arizona conduct enforcement operations in California.

QUESTION: How many Border Patrol agents would be assigned to these four States under the FY 1990 budget request, if enacted?

ANSWER: By the end of FY 1990, the Patrol estimates that there would be about 3,280 Border Patrol agents on duty in the combined States of Arizona, New Mexico, Texas, and California. This estimate is based on current attrition rates for agents and the reduction of total authorized force for the Border Patrol in FY 1990.

QUESTION: How does INS allocate its resources to the various States? What procedure, criteria, and workload factors are used in assigning Border Patrol agents along the Southwest Border in general, and these four States, specifically?

ANSWER: The allocation of resources is based on a number of operational factors. The initial assignment of all Border Patrol agents, upon completion of training at the Border Patrol Academy, will be to one of the stations along the southern land border. This includes stations located in California, Arizona, New Mexico and Texas. The assignment of agents to specific locations is based on actual and projected illegal alien apprehension trends and intelligence on alien movements in the various Border Patrol Sectors along the border. Task force operations are also conducted in various areas to substantiate a need for permanent resources or to determine if saturation levels have been reached for that location. Recently, resources have been targeted to border areas incurring increased drug smuggling activities in parts of all four of those States noted above. Those areas may have had sufficient agents to handle alien crossers, but are now insufficient to interdict both alien traffic and narcotics trafficking. The use of continuous sixth day overtime is also an indicator that permanent resources may be needed in certain border locations. Lastly, space availability within existing and planned facilities is considered in the assignment of agents to the various Border Patrol stations. The Regional Border Patrol offices recommend the allocation of resources to specific locations for their areas. The Central Office Program Manager for the Border Patrol approves or disapproves the specific allocation based on the previously stated operational factors.

STATEMENT OF SENATOR THAD COCHRAN

Senator HOLLINGS. We also have a statement from Senator Cochran that will be printed in the record.

[The statement follows:]

STATEMENT OF SENATOR THAD COCHRAN

Mr. Chairman, as your subcommittee conducts this hearing on the fiscal year 1990 appropriations for the Department of Justice, I wish to express my support for increased funding for U.S. attorneys.

Without question, the major crime problem facing this country at every level is narcotics trafficking and drug-related illegal activity. No element in the war against drugs is more critical than the investigatory and prosecutory tasks of our U.S. attorneys in bringing to justice those responsible for the drug epidemic and the resulting violence that plagues our cities and communities.

I recall the frustration of this subcommittee last year in reporting a conference report for fiscal year 1989 appropriations which, due to the section 302 budget allocation, contained no funds to enhance or increase efforts for the war on drugs. Under that appropriation, funding for U.S. attorney salaries and expenses fell short of the budget request by $33 million, and short of the U.S. attorneys' then-current services requirement by $11 million.

I, too, was concerned about the lack of available funds for expanding our response to the drug problem. It was brought to my attention that the current ratio of assistant U.S. attorneys doing criminal work to law enforcement agents bringing cases exceeded 1 to 19. An independent study recommended a ratio of one assistant U.S. attorney for every five drug task force cases.

It was also brought to my attention that several Federal judicial districts, including the northern district of Mississippi, lacked resources from the organized crime drug enforcement task forces. I considered offering legislation to ensure that at least one drug task force attorney be assigned to each U.S. attorney in the Nation.

Fortunately, the subsequent enactment of the Anti-Drug Abuse Act of 1988 provided supplemental funds to drug enforcement agencies for carrying out their current level of operations. An additional $69 million provided to U.S. attorneys in the drug bill is being used to meet requirements for current services, drug prosecutions, and civil enforcement actions leading to the forfeiture of seized assets. I am advised that most judicial districts now have at least one drug task force attorney.

However, I remain concerned that we are not providing U.S. attorneys with enough resources to do their jobs.

The budget request for fiscal year 1990 does not include a request for additional attorney positions. The request of $454 million for fiscal year 1990 is $6 million less than the fiscal year 1989 enacted level, and would fund fewer attorney positions than the current year level. However, this request is to be supplemented by a reimbursement from the organized crime drug enforcement task forces which will provide an additional $45.7 million for 669 attorney and support positions.

It is unclear from the configuration of the budget request whether the number of assistant U.S. attorneys will actually increase or decrease. Is it possible to narrow the gap between drug arrests and drug prosecutions with fewer assistant U.S. attorneys available to prosecute drug cases?

Mr. Chairman, I support the request for small increases to provide office automation improvements and a more aggressive debt collection program. However, I worry that these increases may not be adequate to expand or even maintain our response to the drug problem and other criminal activity in our Nation.

I hope that the subcommittee will be able to meet the budget request for U.S. attorneys, and, if possible, provide increased funding for fiscal year 1990. I look forward to working with you toward this end.

SUBCOMMITTEE RECESS

Senator HOLLINGS. The subcommittee will stand in recess until Thursday, March 2, when we will meet with members of the Judiciary and the Federal Trade Commission.

[Whereupon, at 11:08 a.m., Thursday, February 23, the subcommittee was recessed, to reconvene at 10 a.m., March 2.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1990

THURSDAY, MARCH 2, 1989

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10:03 a.m., in room S–146, the Capitol, Hon. Ernest F. Hollings (chairman) presiding.

Present: Senators Hollings, Bumpers, Adams, Hatfield, and Kasten.

THE JUDICIARY

BUDGET COMMITTEE OF THE JUDICIAL CONFERENCE

STATEMENT OF HON. RICHARD S. ARNOLD, CHAIRMAN, BUDGET COMMITTEE OF THE JUDICIAL CONFERENCE OF THE UNITED STATES, U.S. CIRCUIT JUDGE, EIGHTH CIRCUIT

ACCOMPANIED BY:

OWEN M. PANNER, CHIEF JUDGE, U.S. DISTRICT COURT, OREGON

RAYMOND A. KARAM, ASSISTANT DIRECTOR FOR ADMINISTRATION, ADMINISTRATIVE OFFICE OF THE U.S. COURTS

INTRODUCTION OF ASSOCIATES

Senator HOLLINGS. Good morning, we open the hearing today with a review of the fiscal 1990 budget request for the Judiciary. To testify on behalf of the Judiciary is the Honorable Richard S. Arnold, Circuit Judge of the Eighth Circuit and Chairman of the Budget Committee of the Judicial Conference. Judge Arnold is accompanied by the Honorable Owen M. Panner, Chief Judge of the U.S. District Court from Oregon and as the representative of the Administrative Office we have Mr. Raymond A. Karam, Assistant Director for Administration.

The Judiciary has requested $1,719,737,000 for the fiscal year 1990. This represents a $269.8 million or 18-percent increase over the level provided for in fiscal year 1989. A supplemental request for the fiscal year 1989 in the amount of $26,095,000 has also been submitted to the committee.

Let me just note for the record that the executive branch, in submission of President Reagan's final budget, recommended a decrease of $203.3 in the Judiciary's request for 1990. They also made a similar reduction in the request of the legislative branch. While the amended Bush budget makes no specific mention of funding for the Judiciary, President Bush has extended his hand to the Congress and hopefully we will return to the usual comity between the three branches of government.

PREPARED STATEMENT OF SENATOR TED STEVENS

Senator HOLLINGS. I will yield to our distinguished colleague from Oregon.

Senator HATFIELD. Thank you, Mr. Chairman. The ranking minority member of this committee, Senator Rudman, is not able to be here this morning. He is attending the funeral of former Senator Norris Cotton of New Hampshire, and Senator Stevens is also with him. I would like to submit a statement on behalf of Senator Stevens for the record. I ask unanimous consent for that, and to also welcome Judge Arnold and Judge Panner on behalf of our ranking member, Senator Rudman. Thank you, Mr. Chairman.

Senator HOLLINGS. Thank you.

[The statement follows:]

STATEMENT OF SENATOR TED STEVENS

I appreciate the opportunity to comment on the Administrative Office's budget request for the judicial branch of government.

With the help of my good friends, Senator Hollings and Senator Rudman, last year the Senate Appropriations Committee authorized three additional bankruptcy judges—one for Arizona, one for Colorado, and one for my home State of Alaska.

That stirred the House Judiciary Committee to action, and they passed a bill authorizing those judgeships plus four others. The Senate, under the leadership of Senators Biden, Thurmond, Heflin, and Grassley, approved the measure and it was signed into law by the President.

There was some concern at the time the bill was taken up on the Senate floor whether funds would be made available to pay for the new judges and their staffs. I am delighted to see that the Administrative Office has requested full funding for these judgeships.

The additional judge will enable the bankruptcy court in Alaska to expand the number of communities in the State in which it will sit to hear cases.

If the funding request is approved, Cordova, Kodiak, Valdez, and Sitka will be served by a bankruptcy judge for the first time. Until now the folks in Cordova, Kodiak, and Valdez—both creditors and debtors—had to travel to Anchorage to try a case. The people in Sitka had to fly or go by boat to Juneau.

Yesterday, I was advised that the Administrative Office is in the process of beginning the selection process for these new Article I judges. Office space is being prepared, so that when the fiscal year 1990 budget goes into effect, the new judges can be appointed, take the oath of office, and begin hearing cases immediately.

I'd like to commend the Administrative Office for its foresight in beginning this process early. Although no one likes going through a bankruptcy, at least undue delays can be avoided with the additional judge.

I look forward to the day when I can come to this Subcommittee and tell it that Alaska no longer needs a second bankruptcy judge. In the meantime, I hope the Subcommittee will approve this funding request.

TRIBUTE TO SENATOR NORRIS COTTON

Senator HOLLINGS. Senator Adams.

Senator ADAMS. Thank you, Mr. Chairman. I just wanted to welcome Judge Arnold and the other members of the panel this morning, and I have no further statement at this time.

Senator HOLLINGS. Good. I ought to be attending the funeral, to tell you the truth, of Senator Cotton. He was the ranking member of our Subcommittee on Legislative Appropriations when I was chairman and we worked closely together. He was a real gentleman of the old school. I don't believe he ever saw a political poster.

Senator **Hatfield**. No; he had antenna.

Senator **Hollings**. He just ran. He did a magnificent job. We worked on many problems together, not only on the legislative bill but also on HEW, on which he was also the ranking minority member. You just can't do the things you want to do all the time, but we are very, very pleased to have you, Judge Arnold.

Senator **Hatfield**. Mr. Chairman, may I interrupt at that moment to recall Senator Cotton?

Senator **Hollings**. Yes.

Senator **Hatfield**. I want to make a comment about what an interesting person he was. You were on Commerce with him, weren't you?

Senator **Hollings**. Yes; both Commerce and the Appropriations Committee.

Senator **Hatfield**. And Appropriations. I remember, you know, he had such a great sense of humor. One time he was running for his last term, and he had come back from New Hampshire. He said, "Well, I finished a challenge today on my campaign that I've never had in my whole life." He didn't know how to respond to it. The president of the student body at the University of New Hampshire introduced him to speak to the students, and the president of the student body said, "There is only one problem with the Senator from New Hampshire, Mr. Cotton; he is suffering from terminal senility." [Laughter.]

He told that on himself. He got the biggest laugh out of that. He thought that was the funniest thing that had ever happened.

Senator **Hollings**. The clerk of our subcommittee, Warren Kane, was his legislative assistant. I am grateful to Senator Rudman for arranging for Mr. Kane to accompany him so that he is up there representing us.

JUDGE ARNOLD

Judge **Arnold**. Mr. Chairman, let me say first that I am honored to make my first appearance before this committee. I was not able to be here last year, and it is a pleasure for me to be here with you. In addition to Judge Panner and Mr. Karam, I want the committee to know that also present here is Judge Gilbert Merritt of the Sixth Circuit, who is a member of the Judicial Resources Committee of the Judicial Conference and is interested in our proceedings.

With the permission of the chair, I will not burden you by reading my opening statement. I would like to submit it for the record and also to summarize briefly two or three points that I think are important and that you may wish to consider.

I do not want to begin my experience with this committee by being an alarmist, but I think that it's my duty to tell you the Judiciary is at a critical crossroads as far as funding is concerned. I say this out of concern not for judges, but out of concern for the public, whose business we have to do.

We are, as you know, of course, an independent branch of Government. I would like to call to your attention something that you already know but which might bear repeating, and that is that we are not involved in discretionary activities. Everybody who files a lawsuit is entitled to a decision, even if it is a crazy lawsuit, and some of them are. But they take time to look at.

ENTITLEMENT PROGRAM ANALOGY

I would like to analogize the courts to an entitlement program. Now, this may be the political equivalent of blasphemy, but it seems to me that we are entitled to a consideration that ranks up with Social Security in budgetary terms.

Social Security is not guaranteed by the Constitution, but due process is, and when people file lawsuits, they are entitled to get decisions, and, of course, they do get decisions. But the quality of the decisionmaking and the speed with which it is made, directly relate to the adequacy of the funding that we receive.

Let me just say two or three things. In our present situation, we are at a staffing level of about 93.5 percent of what our work measurement formulas tell us we need to accomplish the work we have to do. If we do not get the kind of support we are asking for, that level will decline to about 90 percent at the end of this fiscal year.

Well, so what? Let me just tell you a few of the things that happen to the public, not to the judges, but to the public, when that occurs.

In the first place, adjudication is slowed down. To take a good example, in the Southern District of Florida, which is, as the committee knows, a location with a high incidence of drug prosecutions, they have the seventh highest filing in the country of criminal felony cases, but they are, out of all the 94 districts in the country, 79th in terms of median time for disposition.

There is no greater deterrent to crime than the fast disposition of a criminal case, and we are not getting that in one of the most critical areas of the country.

Let me just make a couple of points about civil cases. We, of course, give priority to criminal matters, because the Speedy Trial Act has the effect of requiring a dismissal, if they are not disposed of promptly, but that has a spillover effect on civil litigants; the general public. Within the last 5 years, the percentage of civil cases that are more than 3 years old has gone up to almost 9 percent of the total of civil cases.

What else happens?

Senator **Bumpers**. Judge, I don't understand that. Say that again, the increase in the civil cases.

Judge **Arnold**. The percentage of cases that are more than 3 years old is now 8.8 percent of the pending civil caseload.

Senator **Bumpers**. OK. OK.

CIVIL TRIALS DOWN

Judge **Arnold**. In terms of trials per judgeship, which is another measure, the judges are now trying 22 civil cases a year per judgeship, whereas 5 years ago, they were trying 28. Now, that is a consequence of two things: The increase in criminal business and a lack of adequate funding, adequate personnel.

Let me just give you one more example. When the clerk's office personnel goes down to, say, a 90-percent level, what happens? They start closing the offices early, not because they quit work but because they have to have that time, say, after 4 o'clock in the afternoon, to do paperwork. So, if you go into a clerk's office, say, for the bankruptcy court in the Southern District of New York, unless you go between 10 a.m. and 2 p.m., or some such hours, nobody is there to deal with you.

They are not open to the public; they will not respond to telephone inquiries because the paperwork is piling up to such an extent that that is the only way they can handle it.

One last example, Mr. Chairman, and then I will subside. In the area of probation officers, which is one of the most important functions we perform, the Judiciary is responsible for supervising two large classes of people: Detainees, that is, people charged with crimes who haven't been tried yet, and people who have been convicted but who are on parole or probation or supervised release. Now, as the sentencing guidelines go into effect, the probation officers' time, unless we increase the number of officers, will increasingly be given up to sentencing guideline work and to preparing presentence reports according to the new complicated procedure.

What fallout does that have? It means they have less time to supervise these defendants and convicted people, and we think that we can show a direct correlation between recidivism and the degree of supervision. That is to say, the crime rate goes up when probation officers don't have time to counsel and supervise these people properly, and that is the situation we are getting into.

PREPARED STATEMENT

So, Mr. Chairman, with those few points, I will thank the committee for its attention and invite questions.

Senator HOLLINGS. Thank you, Judge. Your full prepared statement will appear in the record at this point.

[The statement follows:]

STATEMENT OF HON. RICHARD S. ARNOLD

Mr. Chairman and members of the subcommittee: Thank you for the opportunity to appear before you again to present the budget request for the United States courts of appeals, district courts, and related judicial services for fiscal year 1990.

Although this is my first appearance before your Committee, Mr. Chairman, Judge Thomas J. Meskill filled in for me last year when I was unable to attend because of a death in the family. I have asked Chief Judge Owen M. Panner, of the District of Oregon, to appear with me today. Judge Panner has been a member of the Judiciary's Budget Committee since 1985. Mr. Raymond A. Karam, Assistant Director for Administration, is appearing on behalf of Mr. L. Ralph Mecham, Director of the Administrative Office. We will attempt to answer any questions you may have and we will provide any additional material you may require.

Mr. Chairman, the impact of the Deficit Reduction Act on the Judiciary has not diminished since our hearing last year. Indeed, the impact has become more profound and the financial crisis affecting the Federal Judiciary has notably worsened. He have recently reduced expenditures of the controllable areas, i.e., equipment, furniture and furnishings, and space alterations, by approximately 50 percent below fiscal year 1988 levels, which you will recall, from my statement last year, represented a reduction of serious concern. Personnel allocations have been held to 95 percent of formula, based on actual June 30, 1988 workload figures. The workload, in the meantime, is constantly increasing. Presently, bankruptcy case filings are growing at an annual rate of 6.4 percent; probation supervision at 3 percent; appeals at 8 percent; criminal case filings at 1 percent, and civil filings at the rate of 3 percent. In lieu of increasing the number of staff in proportion to the increase in workload, we face the real prospect of having to freeze vacancies, in the event our current projections for collecting fees, which you authorized to supplement our appropriations, do not hold up. We are currently projecting a shortfall of $14 million in the collection of registry fund fees.

I am not remarking on the financial hardships of the Judiciary without full appreciation of the significant reductions in funding suffered by Executive Branch agencies, as well as the Legislative Branch. Moreover, I hasten to add that the Judiciary is indeed grateful for the positive response which you and your Committee gave our plea in fiscal year 1989 to fund us at minimum operating levels. However, I have taken your time to describe our plight because the Judiciary's financial crisis has origins very different from the situation facing the other branches. The Judiciary budget can be analogized, roughly, to the budget for operating the Social Security Administration. No one suggests that the number of clerks sending social security checks should be reduced if it means the checks would arrive a month late. By the same token, the courts should not be required to delay trials for lack of judges, magistrates, and clerks to hear cases and process case filings. Indeed, it is the Constitution which guarantees the most fundamental right of all Americans, the basic right to justice. Yet, funding levels which degrade the Judiciary's ability to respond to those who properly seek redress in the courts, directly impair the citizens' rights themselves. The duty of the Judiciary is unchanging—it is ever required to render timely justice to all those who seek it. The workload itself, however, is both uncontrollable and constantly expanding—uncontrollable because the doors of the nation's courthouses must always be open to those claiming adjudication of their rights, and constantly expanding as those rights expand.

Congressional action is an important source of this workload. In response to their constituents, members of Congress pass legislation to meet their needs. Among many pieces of legislation affecting the criminal law and criminal procedures which affect what the Judiciary has to do, just one, the Comprehensive Crime Control Act of 1984, contained five major criminal law initiatives to which the Judiciary has had to respond: The Sentencing Reform Act; the Bail Reform Act; the Insanity Defense Reform Act; the Criminal Justice Act Revision; and the Victims of Crime Act. The bankruptcy legislation of 1978 and 1984 changed the operations of bankruptcy courts dramatically, significantly increasing their caseloads and their expenditures. More recently, the Childhood Vaccine Injury Act of 1986 could have resulted in more workload for the courts without commensurate funding except for the Judiciary gaining authority to obtain funds from the special fund established under the Act. These, just as a few examples of the many that Congress has mandated, give a small picture of recent legislative additions to the judicial workload.

The Judiciary is sensitive to the funding constraints facing the Appropriations Committees during this period of deficit reduction. If our budget estimates appear high, it is simply because they reflect our best estimates of the cost of getting the job done. If, somehow, the workload of the courts were fixed at current levels, our budget requirements would be limited to inflation, possibly with some additional funding for automation, in order to improve services to the bar and the public.

Obviously, therefore, the Judiciary's budget requirements will remain significantly higher than most other agencies' during times of program reduction and deficit problems. Just the same, I wish to report to this Committee that the Judicial Conference, for the first time ever, reduced the size of its budget increase request by 25 percent. Instead of simply collecting the requirements of the courts and incorporating them in a budget submission, the Chairmen of the substantive Committees of the Conference met with the Budget Committee to arrive at a reduced budget. Sensitive to the criticism we received last year on the Hill, for coming in with a 30 percent increase, we essentially decided to come in with an alternative budget which, with the exception of inflation and other mandatory adjustments, limits funding to about the same level as that requested in fiscal year 1989. The result is an increase of about $250 million, or 17 percent over the fiscal year 1989 enacted budget.

Our budget staff—due to the financial strictures under which we have been operating—have earned a reputation among court personnel as being meaner than junkyard dogs and as generous as the operators of a Dickensian alms house. They have, with our approval, prepared a budget that reflects this frugality. Our budget proposal is, I believe, a bare-bones budget, with little or no room for maneuver.

While the Congress may make some adjustments, I would be derelict in my duty to the Committee if I did not point out the problems that will develop in the event of a serious reduction in resources. Lack of necessary funding will ensure delay in the processing of cases. If we do not get the staff necessary to process our caseload properly, the Judiciary will be in the position of fighting fire with a bucket brigade, because the backlog will continue to mount. If we try to handle the case and document processing with current staff, we will have to reduce the public hours of the courts and access to the courts, which will only exacerbate our problems. This will delay the closing of cases, and our pending list will continue to grow. Reduced funding will further slow our efforts to automate the courts. Presently, neither our clerks' offices nor our judges' chambers possess a level of automation comparable to that of an average law office. All of these things will combine to produce a real possibility that due process will be intolerably delayed.

FISCAL YEAR 1989 SUPPLEMENTALS

The Judiciary has amended its supplemental request of $7,465,000 for fiscal year 1989 to include an additional amount of $18,630,000 to fund the cost of implementing the Federal Sentencing Guidelines. In the meantime, we had withdrawn our supplemental request which appeared in the President's budget of $2,800,000 for the seven bankruptcy judges authorized in fiscal year 1989. Funding for these judgeships has been included in our fiscal year 1990 request.

The supplemental requests are described below. In addition to funding for Sentencing Guidelines, they include additional funding for the appropriations "Fees of Jurors and Commissioners" and "Court Security." Also included is a supplemental request for a new account "Judicial Officers' Retirement Fund" which is necessitated by passage of Public Law 100–659.

Sentencing guidelines.—Our supplemental request has been amended to ask for an additional $18,630,000 and 507 positions to implement the Sentencing Guidelines. In fiscal year 1988, we requested a supplemental budget estimate of $12,165,000 for this purpose, which was not funded. With the handing down of the Supreme Court decision on January 18, 1989 in *United States* v. *Mistretta*, the impact of increased workload is expected to accelerate.

A table describing the cost and personnel by account associated with this request is attached.

Fees of jurors and commissioners.—The supplemental request of $2,465,000 for fees of jurors and commissioners in fiscal year 1989 represents additional funding needed to restore the appropriation base due to the carry forward of unobligated balances. Total obligations for juror expenses in 1988 totaled $47.9 million, of which $4.7 million was available from an unobligated balance carried forward from 1987. Projected obligations for 1989 are $47.6 million, which is based on a slight decrease in juror usage. With an appropriation of $44,135,000 for 1989 and an unobligated balance from 1988 of $1 million, a supplemental of $2,465,000 is required to accommodate projected juror usage in 1989. Since expenses in this appropriation are relatively uncontrollable, it may be necessary to recommend the deferral of civil jury trials for a period of 45 days if the additional funds are not made available.

Court security.—Congress has appropriated the sum of $41,423,000 to support the Judicial Facility Security program in fiscal year 1989. This amount represents an increase of only $570,000 above the amount authorized in fiscal year 1988, and is $1 million less than the amount required to meet inflationary costs and other uncontrollable increases. The fiscal year 1989 supplemental request of $1 million is necessary to provide for the minimum funding level as identified by the Judicial Conference to maintain the current level of services.

Judicial officers' retirement fund.—A supplemental of $4 million is requested to fund estimated annuity payments to be made to bankruptcy judges and magistrates who retire in fiscal year 1989. The Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988 (Public Law 100–659), approved November 15, 1988, entitles a bankruptcy judge or magistrate to an annuity equal to the salary of the position when leaving office, after meeting certain age and service requirements. The upgrading of the retirement benefits for these judicial officers will assist the Judiciary in attracting and retaining the type of individuals the respective offices demand.

MANAGEMENT OF FINANCIAL RESOURCES

Mr. Chairman, when Judge Meskill appeared before you last February, he informed the Committee that the Judiciary was undertaking a pilot budget decentralization project in five courts (Second Circuit Court of Appeals, New York Southern, Washington Western, California Northern, and Arizona). This project is intended to test the benefits of expanding the role of the courts in the management of local operating budgets. With the major exception of the salaries of judges and their staffs, the decentralization project encompasses the majority of the operating expenses of the courts. Fiscal year 1988, the first year of the project, was considered experimental, because the courts were undertaking and implementing a new program. This project will continue over the next 2 years, and an ongoing evaluation will address the benefits and pitfalls of the program and the practicality of expanding budget decentralization to all courts. So far, the participating courts are quite happy with these new procedures. We have found that, not only are the needs of the users better met by allowing reprogramming at the local level, but in the first year these courts actually came in below budget estimates.

At the beginning of fiscal year 1989 we implemented two other programs which will allow other courts some flexibility in the management of their resources. The first program involves the "exchange" of permanent positions for personal computers. Any court may forego personnel expenditures by holding allocated permanent positions vacant above the normal lapse rate and receive credit for the purchase of personal computers. The credit is based on the average Judiciary salary of a grade 8 (JSP-8). This program will greatly benefit those organizations within the courts which, up to now, have not received any personal computers due to budgetary constraints. Even with the shortage in personnel courts are experiencing, some are willing to do without even more people, for short periods of time, to improve the overall efficiency of their operations with computers.

The second program involves the financial resources management program within the Eleventh Circuit. This program expands on the personal computers for personnel lapses program in that all excess funds saved from annual allocations would be available to fund priority requirements. The courts may use these excess funds, as well as the personnel savings, for the purchase of equipment and services. These savings may also be shared among the courts within the Eleventh Circuit.

Because of these programs, every court will have some opportunity to actively manage a portion of its own resources, instead of having the Administrative Office reallocate all funds that may be saved. These programs provide some relief to the frustration of this period of diminishing resources and expanding workload, but are not a substitute for adequate resources to discharge our responsibilities.

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES FISCAL YEAR 1990 REQUEST

Our budget requests for fiscal year 1990 represent the minimum increases consistent with the growing workload of the courts. The budget requirements for the courts of appeals and district courts total $1,603,384,000, $234.3 million and 929 staff years over 1989, adjusted to include the proposed program supplementals. This funding represents an increase of 17 percent over the 1989 figure. Adjustments to base, i.e., reduction in vacancy rate of active judges and the increased cost of travel, supplies, law books, and space rental, account for $112.2 million and workload increases and the cost of improvements in services account for $122.1 million. The additional staff years included in the request represent for 1990 an increase of 5 percent over fiscal year 1989.

INCREASED CASELOAD

The district courts tallied a small reduction in the filing and termination of civil and criminal cases in fiscal year 1987, from the totals in 1986. However, the climb resumed again in 1988, with filings for all four categories (appeals, civil and criminal, and bankruptcy) reaching a grand total of 928,624, which may mean that we will pass the million mark in 1989.

These increases in the Judiciary caseloads are shown on the 6-year table at Attachment 1. The appeals caseload increased by 2,835, or 8 percent in 1988 and, in the 6 years since 1982, has increased 38.1 percent, or by 10,584 cases. If, as we told this Committee last year, our projections for increases in criminal appeals are accurate, criminal appeals will double this fiscal year. This, we expect, will be largely due to the impact of the sentencing guidelines. The total number of appeals in 1988 amounted to 38,345.

Civil and criminal filings combined rose by 6,807 cases, from 1987 to 1988, which represents a percentage of 2.4. From 1982 to 1988, the number of combined cases climbed by 39,920, an increase of 16.3 percent.

Bankruptcy leads the three categories of cases, in terms of numbers, with a 6-year increase of nearly a quarter of a million, or 230,524, an increase of 61.6 percent, and shows no indication that it will diminish. We are, thus, still trying to deal with the flood tide of bankruptcies. The increase in fiscal year 1988 over fiscal year 1987 is

36,275 cases filed or 6.4 percent. There were 69,593 more bankruptcy terminations in 1988, than in 1987, but the number of pending matters still climbed by 20,196.

Persons under probation supervision increased by 2,295 or 3.1 percent to 76,366 in fiscal year 1988. This is 1,366 more than expected 6 months earlier and may be compared with an increase of 17,357 or 29.4 percent over the last 6 years.

SALARIES AND EXPENSES

The fiscal year 1990 request for the "Salaries and Expenses" appropriation totals $1,353,174,000, an increase of $183,174,000 over 1989. Of this amount, $89,563,000 are considered uncontrollable adjustments to the base appropriation and $93,611,000 are in support of workload increases and improvements in services.

Salaries of judges.—Mr. Chairman, our request for the "Salaries of Judges" within this appropriation is based on authorized judgeship positions and related vacancies, the number of judges taking senior status, and retirements. The fiscal year 1990 request represents an increase of $7,140,000 over 1989.

We estimate that, in fiscal year 1990, there will be an average of 23 Article III vacancies, a reduction of seven vacancies from 1989. Provision has also been made for an average of 342 senior and retired judges, a net increase of 18 judges over 1989. A total of 118 judges will be eligible to take senior status by 1990.

Public Law 100-587 established seven new bankruptcy judgeships. Funding for these judgeships is included in our 1990 request. In addition, funds are being requested in 1990 for additional recalled bankruptcy judges totaling seven full-time equivalents (FTE's) to assist the regular judges in handling the increasing caseload.

Salaries of supporting personnel.—Also within this appropriation is "Salaries of Supporting Personnel", in which we seek funds to pay magistrates, clerks, deputies, probation and pretrial officers, and other support staff. It includes 2,100 additional supporting personnel for the courts of appeals, district courts, and bankruptcy courts. As I noted earlier, we are requesting funding for only 44 percent of this increase in terms of staff years.

The Judiciary will require 885 of these positions just to handle the increased workload in circuit, district and bankruptcy court clerks' offices. We need a minimum of 379 of these positions in order to perform additional probation and pretrial services. The basis of our request for these additional people is the result of applying approved staffing formulas to our projected workloads, as will be further described in my statement.

DEPUTY CLERKS

The continued increase in the number of bankruptcy filings mandates, in our view, the vast bulk of the requirement for additional deputy clerks. It is our estimate that bankruptcy filings will increase by 14 percent in fiscal year 1990 over 1989 and 27 percent in fiscal year 1990 over 1988, because of a sustained level of high interest rates and continued increases in consumer borrowing. Mr. Chairman, of the 885 positions we are requesting, 465 are for the bankruptcy courts.

We estimate that 72 additional deputy clerks will be needed for the courts of appeals and that 340 more will be required for the district courts. We project appeals to increase 3.7 percent in fiscal year 1990 over 1989 and 11 percent in fiscal year 1990 over 1988, a significant portion of which are criminal cases. In the district courts, criminal cases are projected to increase 2.2 percent in fiscal year 1990 over 1989 and 4 percent in fiscal year 1990 over 1988, while civil cases will increase 5.3 percent in fiscal year 1990 over 1989 and 12.5 percent in fiscal year 1990 over 1988.

BANKRUPTCY JUDGES AND MAGISTRATES

Emergencies that inevitably arise in districts without adequate existing judicial resources will go unmet unless the additional bankruptcy judgeships and new magistrates we have requested are provided. Without the 13 new full-time magistrates which have been requested, the efficiency of Article III judgeships will be reduced because they will have to take care of unmet needs and, as a result, we shall be getting demands for additional judges. Last year, the magistrates handled 89,996 Criminal Trial Jurisdiction cases, 143,352 Preliminary Felony Proceedings, and 231,834 Other Criminal and Civil Matters.

Funding has been requested for the recently established bankruptcy judgeships in the judicial districts of Alaska, Colorado, Kansas, Kentucky, Texas Eastern, Texas Western, and Arizona. Also, additional funding is requested to increase the use of recalled bankruptcy judges from 10 judge years to 17 judge years. This program has greatly assisted the districts most affected by volatile caseload increases.

PROBATION SERVICE

The new sentencing guidelines have brought an added complexity to the pre-sentence reports prepared by probation offices, requiring much more investigative time for each offender's report. A total of 859 positions are required for probation, of which 480 are needed as a result of the increased work associated with these guidelines, and 379 are needed to accommodate the projected increase in caseload: 196 positions for 1989 workload and 183 positions for 1990 workload. There has been a steady increase in the number of persons under supervision since 1980. It is projected that the supervision caseload will increase by 4.5 percent in fiscal year 1990 over 1989 and 6.7 percent in fiscal year 1990 over 1988.

ELECTRONIC COURT RECORDING PROGRAM

Our request for an additional 150 positions and $2,020,000 for electronic court recording reflects the success of the program. Presently, 48 active and 25 senior district judges have elected to use this equipment to record their proceedings, 20 court reporter positions have been abolished through attrition, and 18 new court reporter positions have been foregone. A total of 121 bankruptcy judges have elected to use recording equipment in lieu of contract court reporters. As contract court reporters continue to raise their rates, the recording systems will become more financially attractive to bankruptcy judges. Of the 150 positions requested, 60 will be dedicated to magistrate proceedings, which have become more complex and for which the need for transcripts for review and appeals has increased. The operator of the recording equipment is paid as a JSP 8 or $21,590 while a court reporter is paid up to $38,700, and thus increased savings are effected as more operators replace court reporters.

Probation support programs.—The Drug Dependent Offenders program is growing as rapidly as funds become available to spend on drug and alcohol aftercare treatment. Although the operation of the program is a major burden for the Probation Services, the officers find that it greatly enhances the effectiveness of their work with drug dependent persons. It should be noted that the probation program is the best program to combat recidivism. Similarly, it is expected that the new Mental Health Treatment program authorized under 18 U.S.C. Section 3672, which was amended by the Sentencing Act of 1987, will be most helpful by providing psychiatric evaluations, individual and group therapy, and the services of a social worker or psychologist. It is estimated that 1,000 individuals will require such services at a cost of $1,500 per person. Funding for fiscal year 1990 has been limited to $375,000 or 25 percent of the total required.

National Childhood Vaccine Injury Act.—We have again this year incorporated a provision in our appropriation language to fund up to $2,500,000 for purposes of processing this new caseload for the courts, specifically the U.S. Claims Court. This amount will provide for 20 Special Masters and support staff to handle the expected growth in the workload.

Court automation.—Our automation requirements will increase by $43,166,000 in fiscal year 1990. Part of this, $11,840,000, is requested to expand the data processing capability for district and bankruptcy courts, particularly in the area of case management and financial reporting for larger courts, courts which will require larger equipment. A total of $26,854,000 is required to purchase about 3,000 microcomputers for office automation. These units will be installed in the chambers of circuit, district, and bankruptcy judges and magistrates, and in support offices. Each chamber will have a cluster of networked compatible microcomputer work stations. The remaining money, $4,472,000, will be used for the nationwide data network project. This latter project will provide judicial officers in each court building with a mechanism for communicating with those locations, both internal and external to the Judiciary, necessary for the court to conduct business in an automated environment.

Mr. Chairman, we are growing increasingly concerned that the Judiciary will not become adequately automated given the impact of deficit reductions on our appropriations. On the one hand, we need a certain level of staffing to maintain our workload current. On the other, once that is funded, little is left for automation except limited funding for replacement of old equipment. I firmly believe that as the technology continues to advance, our system of dispensing justice will become severely hampered if we fall too far behind on making advances in automation technology available to the courts.

We have proposed in this budget for the first time to transfer the funding of a major function from the Administrative Office appropriation to the Courts Salaries and Expenses appropriation. The transfer totals $4,650,000 and supports 90 positions. We have found that technical support for court automation, which is supplied by the Administrative Office, has not kept pace with court needs. Given the reductions in the Administrative Office appropriations over the years together with their ever-growing workload to support the growth in the courts, I can understand why the Administrative Office has not been able to keep up in the area of automation support. We are faced with the anomalous situation where a court is given automation resources, hardware, and programs, but the Administrative Office cannot bring this new capability on line. The Administrative Office is the obvious supplier of this assistance to the courts, and this transfer will facilitate the provision of those services. Realistic priorities and programs can then be established. In addition to the transfer, we have requested an increase of $2,190,000 and 74 positions to address the courts automation support requirements.

DEFENDER SERVICES

The sum of $145,135,000 is requested for the Federal Public Defender program, an increase of $35,035,000. Without the requested increase, it is estimated that either charges will be dismissed for failure to provide counsel or counsel will be appointed without compensation for approximately 7,235 defendants; that a projected 320 new death penalty habeas corpus petitions will go unrepresented; that seven additional Community Defender Death Penalty Resource Centers will not be established; that no funds will be available for an increasing workload experienced by the 13 already established Centers; and that alternate hourly attorney compensation rates in selected districts, where substantial justification for a rate increase has been demonstrated, will go unpaid.

FEES OF JURORS AND COMMISSIONERS

In relation to our request of $48,585,000 for fees of jurors, an increase of $1,985,000, I will mention that a failure to make these funds available will mean, in all likelihood, recommending the suspension or deferral of civil jury trials, in order to provide funds for criminal jury trials and grand juries. If this deferral becomes necessary, it is estimated that such civil trials would have to be put on hold for 34 days in fiscal year 1990. As this Committee knows, the Eighth Circuit enjoined the Director of the Administrative Office, and the Ninth Circuit declared the suspension unconstitutional, when civil jury trials were suspended for a brief period in 1986. Renewed litigation can be expected, if civil jury trials are suspended in 1990.

COURT SECURITY

We are requesting $56,490,000 for Court Security, an increase of $14,067,000. This represents a request of 489 additional court security officer positions for fiscal year 1990, to provide a security presence at court locations where there are judicial officers in residence with no court security officer coverage; to increase staff at large metropolitan locations to handle the significant increase in high risk proceedings; to augment the existing complement of court security officers in districts which are minimally staffed; and to institute building entrance screening to implement the recently enacted prohibition against the possession of firearms and dangerous weapons in Federal facilities.

The issue of adequate and appropriate court security has been a long term concern of the Federal Judiciary. The very nature of judicial proceedings creates a volatile and potentially dangerous environment. Security experts are unanimous in their belief that the most critical factor in protecting any potential target is its perimeter. The primary mission of the Judicial Facility Security Program, the court security officers, and the security systems and equipment, is to protect the perimeter of court facilities, to prevent the unlawful introduction of weapons or other dangerous devices into judicial areas, and—by their visual and physical presence—deter disruptions and violence. In reality, it is the first line of defense against those who attempt to intimidate the judicial process and thwart justice.

Court Security Officers fill a critical void created by the decrease in the Federal Protective Service, and they perform their mission better than it has ever been performed before. The real-life situations a court security officer must face every day, and incidents for potential violence which he must defuse, are numerous. U.S. Marshals Service statistics show that, in fiscal year 1987, over 18,000 illegal weapons were prevented from being taken into court facilities, and court security officers made over 150 arrests. The final tally for fiscal year 1988 will show a significant increase in these figures.

SENTENCING GUIDELINES

Previously, I said we amended our supplemental to provide funding to implement the Sentencing Guidelines. Similarly, we also amended our fiscal year 1990 request, increasing it by $18,228,000. Now that the *Mistretta* decision is reality, I expect the workload to increase sharply. Our reports show that only 16 percent of the 43,080 persons sentenced between November 1, 1987 and October 31, 1988 were eligible for sentencing under the Guidelines. The rate of eligibility rose to 30 percent on an annual basis at the end of that period and the Sentencing Commission expects the eligibility rate to reach 76 percent in fiscal year 1989 and 82 percent in fiscal year 1990.

Inasmuch as we had included partial funding for Sentencing Guidelines in our fiscal year 1990 budget estimates, our amendment reflects the increase necessary to provide 100 percent funding for the program. A statement is attached presenting the increases by account.

CONCLUSION

Mr. Chairman, thank you again for the opportunity to present the Judiciary's budget requirements before your committee. I have attempted to highlight the important elements of the budget and not duplicate the many details found in our justifications. We are determined to do the best job possible with the resources you provide us. If our requested increase should seem large in light of deficit reduction constraints, it represents needs which have been deferred for lack of funds and needs springing from the ever growing, uncontrollable workload. We believe we would not be acting in good faith unless these requirements were made known to you. The Judicial Conference has indicated it is prepared to tackle the 1990 workload at 1989 funding levels. I don't believe the Judiciary can sacrifice much more without doing significant harm to the accomplishment of its mission.

On behalf of the Budget Committee of the Judicial Conference, we thank you and your Committee for your attention and for the many considerations with which you have favored us in the past. We are prepared to respond to any request for additional information.

ATTACHMENT 1.—COMPARATIVE WORKLOAD DATA, FISCAL YEARS 1982 AND 1988

	Fiscal year 1982	Fiscal year 1988	Percent of change
Courts of Appeals:			
Filings	27,761	38,345	+38
Terminations	28,151	36,497	+30
Pending, end of year	21,758	28,393	+31
District courts:			
Civil cases:			
Filed	212,503	240,821	+13
Terminated	196,069	236,625	+21
Pending, end of year	211,958	248,866	+18
Criminal cases:			
Filed	33,097	44,699	+35
Terminated	31,877	41,878	+31
Pending, end of year	17,566	28,753	+64
Totals:			
Filed	245,600	285,520	+16
Terminated	227,946	278,503	+22
Pending, end of year	229,524	277,619	+21
Bankruptcy petitions:			
Filed	374,235	604,759	+62
Terminated	313,874	584,563	+86
Pending, end of year	531,717	828,283	+56
Magistrates:			
Criminal trial jurisdiction cases	[1] 86,725	[1] 89,996	+4
Civil trial jurisfiction cases	[1] 2,452	[1] 5,903	+141
Preliminary felony proceedings	[1] 98,458	[1] 143,352	+46
Other criminal and civil matters	[1] 138,903	[1] 231,834	+67
Probation:			
Persons received for supervision	32,048	37,909	+18

ATTACHMENT 1.—COMPARATIVE WORKLOAD DATA, FISCAL YEARS 1982 AND 1988—Continued

	Fiscal year 1982	Fiscal year 1988	Percent of change
Persons under supervision, end of year	59,009	76,226	+29
Pre/post-sentence investigations	29,057	38,592	+33
Other investigations	86,706	108,178	+25
Other:			
Petitions for naturalization	[1] 158,146	[1] 243,049	+54
Aliens naturalized	[1] 141,252	[1] 252,742	+79

[1] Data for the year ended June 30.

SUMMARY OF PROPOSED SUPPLEMENTAL REQUESTS FOR FISCAL YEAR 1989

[Dollar amounts in thousands]

Appropriation	Supplemental pending	Amended supplemental		Total supplemental
		Positions	Amount	
Supreme Court				
Court of Appeals for the Federal Circuit				
Court of International Trade				
Courts of Appeals, District Courts, and Other Judicial Services:				
Salaries and expenses		480	$9,000	$9,000
Defender services		22	6,750	6,750
Fees of jurors and commissioners	$2,465		2,390	4,855
Court security	1,000			1,000
Subtotal	3,465	502	18,140	21,605
Administrative Office of the United States Courts		3	50	50
Federal Judicial Center		2	440	440
Judicial Officers' Retirement Fund	4,000			4,000
Total, The Judiciary	7,465	507	18,630	26,095
United States Sentencing Commission				
Grand total	7,465	507	18,630	26,095

SUMMARY OF BUDGETARY REQUIREMENTS FOR FISCAL YEAR 1990

[Dollar amounts in thousands]

Appropriation	Request pending	Proposed amendment		Revised request
		Positions	Amount	
Supreme Court	23,027			$23,027
Court of Appeals for the Federal Circuit	8,985			8,985
Court of International Trade	8,423			8,423
Courts of Appeals, District Courts, and Other Judicial Services:				
Salaries and expenses	1,353.174		5,100	1,358,274
Defender services	145,135	22	10,125	155,260
Fees of jurors and commissioners	48,585		2,415	51,000
Court security	56,490			56,490
Subtotal	1,603,384	22	17,640	1,621,024
Administrative Office of the United States Courts	33,600		70	33,670
Federal Judicial Center	13,170	2	518	13,688
Judicial Officers' Retirement Fund	4,000			4,000
Total, The Judiciary	1,694,589	24	18,228	1,712,817
United States Sentencing Commission	6,920			6,920

SUMMARY OF BUDGETARY REQUIREMENTS FOR FISCAL YEAR 1990—Continued

[Dollar amounts in thousands]

Appropriation	Request pending	Proposed amendment		Revised request
		Positions	Amount	
Grand total	1,701,509	24	18,228	1,719,737

DEFINITION OF ENTITLEMENT

Senator HOLLINGS. I take it you have many good friends, Judge Arnold, because you have been overintroduced by our wonderful colleague here, Senator Bumpers from Arkansas, and even Connie Mack, your relative, called me. They wanted to make sure we took good care of Judge Arnold.

Judge ARNOLD. They didn't tell you the truth about me, did they, Mr. Chairman?

Senator HOLLINGS. No; but I am going to tell you the truth about entitlements and the Judiciary right now. When we speak of the Judiciary, that separate branch of Government as an entitlement, isn't the FBI also entitled to arrest every culprit? So, then we have to make the FBI an entitlement and at least double the 9,000 agents on board to at least 18,000. The DEA says they are only getting 10 percent of the drugs, so to get the other 90 percent, we would have to increase our efforts by nine times that amount.

Then I could go to the other agencies. The Customs Service would have to be made an entitlement and right on down the line. But, then I thought of a solution. I pulled this card out of my shirt, and it says, "Defense Appropriations at 9 o'clock, base closings," which I have just left. They can't complete that area which is going on now; "10 o'clock, State, Justice," I am finally here, "10 o'clock Budget Committee, William Seidman of the FDIC." I am supposed to be there cross examining him.

Then we have a joint session at 10 o'clock, which I am not able to attend.

I wanted to go to the funeral of my good friend Norris Cotton whom I really loved, and I can go right on down this list. Now, you see, we can correct your difficulty by one little line in the law, and that is knock out lifetime tenure for Federal judges. As a Senator, you don't find me complaining about, "We need more Senators."

Judge ARNOLD. I am not sure how knocking out lifetime tenure is going to help.

Senator HOLLINGS. Because you wouldn't be my counterpart saying, "Let's have more judges." You would be out there with a happy face.

Judge ARNOLD. We would be complaining.

Senator HOLLINGS. Oh, yes. You see I have got a happy face on this morning. I am not complaining about all of this. I am in charge; everything is going well, sure. What can I do for you?

You change the attitude around. If you don't have lifetime, it changes, doesn't it? We don't ask for extra Senators; two of them. In fact, one is enough in many cases. [Laughter.]

Senator HATFIELD. The senior Senators.

Senator **Hollings**. Yes; well, if I sound annoyed, I am in my 23rd year, and I am still a junior Senator. [Laughter.]

Senator **Bumpers**. You are the seniorest junior Senator we have, I guess.

Senator **Hollings**. That is right. I participated in the Bicentennial; I made a record for the Bicentennial.

You are right about the needs of the Judiciary. I don't know what we are going to do. This is the sorriest Government I have ever seen. I saw the best. I was out on a Trident sub and saw how disciplined that crowd was and how responsive, alert, and enthusiastic—studying in their off time. I said, "Man, this is Government at its best. I have just come from Government at its worst."

We haven't paid a bill, and instead of really participating and providing, we in Congress are just passengers protecting our own hides. We don't really run the Government anymore. The attitude in Washington is as long as one can get by the next election, who cares about the next generation.

We aren't meeting the needs of the Judiciary. We aren't meeting the needs of the FBI or anything else. We are backed up on entitlements like the Women, Infants, and Children Feeding Program. It is only getting 50 percent. Yet for every $1 we spend there, we save $3. We don't even spend a little money to save money in this blooming Government, because we are all out there saying, "We are against taxes; we are against taxes." It is child's play.

I don't know what will ever stop it, yet we are able to do it at the State level of government. We three Governors couldn't possibly get elected unless we had a triple A credit rating and promised to pay the bills. I couldn't get to Columbia, they would run me out. Yet, I can't get elected to Washington unless I promise not to pay the bills. It is lunacy.

But let me yield to Senator Hatfield and then Senator Bumpers, and then I will have some questions. But I am glad that you are here. You are a chief judge? I think mine is the best.

Judge **Panner**. Yes; he is on our group.

Senator **Hollings**. I know, Judge Blatt and I have rehearsed this budget three times already. [Laughter.]

Go ahead.

Senator **Hatfield**. Well, I only want to say that I share the frustrations that our chairman has expressed. We just don't seem to be able to get our priorities in order. We spend more money in the long run trying to correct some of these problems than we would have if we had spent some upfront and preventive money.

Judge, you indicated what your caseload backlog has been. Let me ask you from another perspective. As I understand the story, you have about 1 year's work of pending cases if you combine the district and the circuit courts; it would take about 1 year to dispose of them, and even longer in the bankruptcy area.

Do you consider this level of backlog to be manageable? When I use the word manageable, I mean can it eventually work its way out, or is the only answer to add more judges and more clerks? Is that the only answer?

MORE JUDGES AND CLERKS IS ANSWER

Judge Arnold. Let me give you a brief answer and then I will defer to Judge Panner for his views on it. More judges and clerks are not the only answer. Congress could choose to reduce our workload. You could, for example, reduce in some fashion the diversity jurisdiction of the district courts, which is a request that the Judicial Conference has made several times.

That would be one way to address the problem. If I may make one other point, the next time Congress considers giving us more work to do, I would just beseech you to consider also what resources we need to accomplish that work.

AUTOMATION

Judge Panner, would you like to add something?

Judge Panner. I would, and I want you to understand, Mr. Chairman, that we are very sympathetic to your problem. We have a serious problem, probably more serious than most people realize and have been involved in.

Believe it or not, in the last 20 years, the workload on a per judge basis has increased by 170 percent per judge. That is at the district court level. On the court of appeals level, it has increased by 400 percent. Twenty years ago, Federal judges were working very hard.

So you can see that whether that is manageable or not, Senator, is a very difficult question, and I have to say that we are at a crossroads, as Judge Arnold pointed out. We are underequipped as far as automation goes. We don't have the automation that is comparable to the average private practitioner. We are trying desperately to get that in shape, and if we don't get this budget essentially as we have asked for it, we are going to remain in those dark ages. It is counterproductive in that respect. It feeds on itself.

Senator Hollings. To that point, you are trying to expedite the 5-year or 3-year automation program?

Judge Panner. That is right. We are looking, unless something drastic happens, at reducing the 5 years to 3 years.

It is a serious problem, and when you have these kinds of statistics and that volume, there are serious doubts that we will be able to give the deliberation needed.

Senator Hatfield. How would you then describe that same situation when the full impact of the drug enforcement bills and all these others are superimposed upon this current framework?

100 PERCENT STAFFING NEEDED

Judge Panner. That is an impossible problem. In other words, we need everything we can get. We need good automation. We need 100 percent staffing in our clerks' offices. It goes beyond what Judge Arnold said in the trial court. We don't get the papers.

I have had hearings where lawyers from all over the United States appear, and believe it or not, the papers are not on my desk and hadn't been for 3 or 4 days before, because the clerk's office is trying desperately to implement an automation system.

Now, that calls for drastic action, and it makes us very unhappy. But that is the kind of thing that goes on pretty regularly these days.

We are up against it with the drug bill. We have six new U.S. attorneys coming in to the District of Oregon, Senator. Did you know that? Six new U.S. attorneys—as well as new FBI agents—because the money is going into crime aspects. These new attorneys and agents increase our load tremendously. The criminal percentage of cases per judge has increased over 200 percent in the last 20 years. So, the criminal load is getting heavier.

We need every tool we can get, and I agree with Judge Arnold, new judges won't solve the problem alone, and we are not here asking for new judges. New judges would help, but that bill hasn't been introduced despite the fact that we have asked for it.

CERTIORARI FOR THE COURTS

Senator **HATFIELD**. I am the only nonlawyer here, but let me ask you a question regarding the circuits and some of their workload. You have four circuits that are interpreting the law a certain way. You have three more interpreting the same law a different way. Then, to adjudicate the differences between the circuits, Justice Berger, former Chief Justice of the United States, some time back proposed that they call in a panel of circuit judges from across the country to sit and adjudicate those differences between the circuits relating to the same law.

Are there other things that the courts have been thinking of in terms of how to make more effective and more efficient such things as these distinctions at the circuit level?

Judge **PANNER**. There is an excellent answer not popular with the ABA. The simple answer is certiorari for the circuits, which will permit the circuits to sit in panels of five or seven judges instead of three judges. In the ninth circuit we have 28 judges plus district judges helping, and we have panels going in all directions, three-judge panels, trying desperately to keep up. They are doing the best they can with this 400 percent increase per judge.

But that is not going to solve it. If we had certiorari for the circuit, the circuit could decide which cases they want to take out of the district court. That would help tremendously and not only at the circuit level, but at the district level, because lawyers wouldn't be posturing so much. They would be thinking about the important issues.

Senator **HATFIELD**. But Judge, is the only way to adjudicate those differences between the circuits the Supreme Court at the current time?

Judge **PANNER**. It is. That is right, it is.

Senator **HATFIELD**. Why should the Supreme Court impanel itself to take that kind of a job when that could be better handled between the circuits themselves?

Judge **ARNOLD**. If I can give an opinion on that, Senator, and this is just my opinion—if the Judicial Conference has a position on it, I don't know what it is—all of the important conflicts between the circuits are being adequately resolved by the Supreme Court, not every conflict, but the important ones, the ones that really matter.

Now, that is a controversial opinion. There are reasonable people who disagree with that, but that is my impression.

Judge **PANNER**. That is not holding up our work in the district.

Senator **HATFIELD**. I think if we had a justice of the Supreme Court here today, Mr. Chairman, he would find the same increase in workloads that you are talking about at the district and circuit level. So much of that effort has to be to adjudicate the differences between the circuits that really are not that important.

Senator **HOLLINGS**. That is what Chief Justice Burger was getting to, and Judge Rehnquist. They all said, "We just can't handle it all."

Judge **PANNER**. You did help them a little bit. You gave them a discretionary directive last year, which does help to some degree.

Senator **HATFIELD**. Thank you, Mr. Chairman. I have some other questions I will submit for the record, if I may. Thank you.

Senator **HOLLINGS**. Yes; Senator Bumpers.

EXECUTIVE REDUCTION TO JUDICIARY REQUEST

Senator **BUMPERS**. Mr. Chairman, first of all, I want to say I wish all of our witnesses could come in here and just extemporaneously tell us what their budget problems are like Judge Arnold has, with a great deal of clarity and understanding. He knows that I am totally sympathetic with the problems they have. I have told him there isn't a way in God's world we can give them an 18 percent increase.

I have been making a speech around the country, mostly at Democratic functions, but nevertheless, it is a perfectly legitimate thought. We have put off so many things and we have refused to deal with so many problems in this country that they are all converging now. The demand is just piling up, and the whole thing is about to cave in.

Senator Hollings said a minute ago he didn't know what was going to happen. I can tell you what is going to happen. I can't tell you when, but I can sure tell you what is going to happen with the budget and this administration's attitude about it. It is so cynical.

Normally, the President submits the Judiciary budget, according to their request without change, and then they leave it up to us to decide. President Reagan submitted a budget cut in the Judiciary by $200 million.

Senator **HOLLINGS**. That is right.

Senator **BUMPERS**. In keeping what he calls Gramm-Rudman-Hollings.

Judge **ARNOLD**. That was the first time that ever happened.

Senator **BUMPERS**. Yes; I understand that is the first time that ever happened. Mr. Chairman, you were on that advisory drug committee when we drafted that drug bill and we gave them so many extra judges and so many extra U.S. attorneys and so many extra Marshals. We just forgot one thing: We forgot to give them the money.

Senator **HATFIELD**. Dale, you forget that the problem was not just the Judiciary. The basic problem was the former administration. I don't think the President ever had political science 101 about three-branch Government. I don't think he ever recognized that there were two other branches of government.

Senator **Bumpers**. Yes; that was a problem.

Senator **Hatfield**. So it was easy to have a $200 million reduction.

Senator **Bumpers**. I might say, I don't think our former President ever read a book, period, in the last 30 years. [Laughter.]

VACCINE COMPENSATION TRUST FUND

Senator **Bumpers**. On vaccine compensation, are you up to speed on that, Judge Arnold?

Judge **Arnold**. Yes; I am.

Senator **Bumpers**. Last year, you may recall, I finally agreed to take $1.5 million out of the vaccine compensation trust fund for administrative purposes. The vaccine trust fund, Mr. Chairman and Senator Hatfield, had been building at a much faster rate than we anticipated and the claims had been coming in slower, but we still had some apprehension.

I told Neil Smith last year when we agreed on that amount that it was a one-shot deal; we weren't going to do that any more. We were going to face the Judiciary problems as Judiciary problems and let that vaccine compensation fund function as it was intended to.

Now that fund has $90 million in it, and we have allowed $80 million of that to be borrowed to take care of claims prior to October 1, 1988. I don't have any objection to that. That is borrowed money that is going to have to be paid back into the trust fund.

So far, as I understand it, about 100 claims have been filed in the court of claims. That is quite a chore for the court of claims to take care of those. Of course, if that happens to build precipitously, it is going to be a real nightmare for them from a personnel standpoint. I don't think any of those have been adjudicated. I don't think a single one of them has been finally adjudicated.

I think there may be a pentup number of claims out there that haven't been filed by trial attorneys who are waiting to see just how the court of claims handles these things, what kind of verdicts or what kinds of sums they are going to award these injured children.

I think if they are fairly generous, then these trial attorneys are going to risk the court of claims, and they are going to start filing their claims under the administrative method rather than going into court with them.

Can you tell me out of the 100 claims that have been filed, how many of those are for injuries prior to October 1, 1988?

Judge **Arnold**. As I understand it, they are all pre-October 1 claims.

Senator **Bumpers**. OK.

VACCINE INJURY CASES

Judge **Arnold**. I am subject to correction. I will check that, but the last time I looked, there were 93. This was 1 month ago. My information is 1 month old. There have been 93 cases filed, and they are being handled by special masters. They are up to 10 that are authorized, but as I recall, only 8 have been recruited and hired.

They are adequately staffed to handle the present volume, and they could go up to special masters during this fiscal year, if necessary.

Senator **Bumpers**. With their present funding?

Judge **Arnold**. With their present funding.

Senator **Bumpers**. You are asking for $2.5 million out of the trust fund for this year, are you not?

Judge **Arnold**. For fiscal year 1990.

Senator **Bumpers**. I mean for 1990, yes.

Judge **Arnold**. That is correct, and we have figures showing what the anticipated growth of the trust fund would be. It is, I think, accurate to say it would be ample to cover the $2.5 million.

Senator **Bumpers**. It is going faster than I thought it would, frankly, but bear in mind, we haven't made any awards yet either, so we don't know how those things are going to come out.

Judge **Arnold**. That is quite true. I believe the claims now pending are retroactive claims.

Senator **Bumpers**. That was supposed to have been appropriated money, you know. That was not supposed to come out of the trust fund. Although we have borrowed from the trust fund, we set aside $80 million to pay those claims. I said last year I would never sit still for the additional money coming out of the trust fund, but since the trust fund is building so much faster than we thought it would, I am not going to squawk about the $2.5 million you are asking more for.

Mr. Chairman, I don't have any additional questions. Incidentally, Richard was No. 1 in Michael Dukakis' law school class up at Harvard, so we had him all geared to go to the Supreme Court if we could have turned that election around.

Senator **Hollings**. I believe Justice Scalia was No. 1.

Senator **Bumpers**. He used to run the Harvard Law Review. He called me up and wanted me to vote for Scalia for the Supreme Court.

Judge **Arnold**. He was in my class. He is a good man.

Senator **Hollings**. I voted for him. In fact, I voted for George Bush three times. I voted for George for the CIA——[Laughter.]

Senator **Hollings**[continuing]. As Ambassador to China and, you know, come right on down the line.

Senator **Hatfield**. How about chairman of the Republican Party? [Laughter.]

Senator **Hollings**. No; I didn't vote for him on that. [Laughter.] I was for Lee Atwater. [Laughter.]

Senator **Hatfield**. Good to see you, Judge.

Judge **Arnold**. Thanks.

ARTICLE III JUDGESHIPS

Senator **Hollings**. Judge, let me ask you, how many judges do we have now? How many do we need from what you are talking about? I know the drug bill authorized $2.5 billion. We only appropriated $500 million. So, we said the next President would come in with the remainder of that drug bill, but instead of the next President finding the other $2 billion, he said, "We don't need it" and put in only $1 billion. We are still $2 billion shy, which means the judges are shy, some of those U.S. attorneys are shy, some of the customs agents are shy, and right on down the line. That was an emergency signed by President Reagan. Everybody thought it was a well worked-out, tailored-down kind of crisis budget. It wasn't easy, and we didn't have the money.

We purposely brought it down, but back to, now, the judges themselves, I don't want to call you a bottleneck. I guess it is a choke point. If I put in so many customs agents, so many districts attorneys, so many DEA agents, the FBI and the like, it comes around the line, and it all comes to so many judges. You have got to have a judge to try the case. What is the shortage?

Judge **Arnold**. I have been handed the figures, which is fortunate. There are 731 article III judgeships. That is not judges, but judgeships. Because there are senior judges, the total is about 1,000 article III judges, and 80 percent of the senior judges work, do substantial work.

Senator **Bumpers**. What percent?

Judge **Arnold**. Eighty percent.

Senator **Hollings**. Eighty percent.

Judge **Arnold**. Which is to say about 240 out of the 300 senior judges do substantial work. Some of them, like Judge Williams, are disabled and are not able to work.

Now, we estimate there will be 23 vacancies on the average in 1990. The 1989 figure is 30. There are about 30 vacancies now. When you say, how many do we need, the Judicial Conference has requested 73 additional judgeships, 59 district judges, and 14 circuit judges. That request is almost 3 years old, and a bill has not been introduced to create those judgeships.

We would like to have them. We need them.

Senator **Hollings**. Well, you know, there was politics involved in that, not money. They said, "Well, we will wait until we get our President before we put in a bill."

Judge **Arnold**. I am shocked to hear you say that, Mr. Chairman.

Judge **Panner**. Nobody suspected that.

Judge **Arnold**. Senator Bumpers told me the judges were selected on merit.

Senator **Hollings**. We have got to do something about it. We have been holding up, and we are 3 years behind in the Judicial Conference's estimate?

Judge **Panner**. Yes; and all the activity in crime, it hurts us.

FEDERAL PUBLIC DEFENDERS

Senator **Hollings**. What about jumping to a little minor thing, which struck me about the court-appointed attorneys. I believe you call them panel attorneys now vis-a-vis Federal defense defendant counsel. Both of them are new to me. The judges used to call me up and say, "Come on down, you have got the next case." You would have to drop whatever you were doing and pick up the case.

Now we have the Federal defender, a well-conceived program, but panel attorneys or court-appointed ones are making twice as much money per case. Couldn't we save money by increasing, from your professional standpoint, the Federal defender's office rather than having all those court-appointed attorneys?

Judge **Arnold**. To some degree, yes, and let me explain how that is handled. There are 94 districts. In 47 of them, there are Federal public defenders' offices. The cost per case, when they handle a criminal defense, is substantially less than when a private attorney appointed by the court handles it. You have those offices in 47 districts.

There are 28 other districts that are eligible, in terms of caseload, to handle it. The statute, the Criminal Justice Act, requires that there be 200 cases in a district before a Federal public defender can be appointed.

Of the 47 districts that don't now have a public defender's office, two are in the process of getting one, the Northern District of Texas, which is Dallas, and the District of Columbia. Of the remaining 45 districts, 17 are eligible. If I said 28 before, I was wrong. Seventeen are eligible; 28 are not. So under the statute, there are 28 districts where we can't have a Federal public defender.

The other thing is that the statute requires that a substantial portion of the criminal appointments, even in districts that have Federal public defenders, must go to private lawyers.

Senator **Bumpers**. Say that again.

Judge **Arnold**. The statute requires the Criminal Justice Act, 18 U.S.C. 3006(A) provides that a substantial proportion of the criminal appointments must go to private attorneys, even in those districts which have Federal public defenders.

Senator **Hollings**. Why?

Senator **Bumpers**. I was going to say, what on earth was their reason?

Judge **Arnold**. Well, there are several reasons for it. I suspect one reason is that there are cases where the Federal public defender's office just can't cover all the bases, if as we have increasingly, these large multi-defendant cases.

Senator **Hollings**. But it would be worded that way.

Senator **Bumpers**. Yes; why don't we make it mandatory? Why should it be done on an ad hoc basis?

Judge **Panner**. It was free enterprise, I think.

Senator **Hollings**. Uh-oh. Incidentally, you and I didn't get paid when we were appointed. When you were appointed, you came down and tried the case. I might take 2 or 3 days out of my private practice, and that was it.

Senator **Bumpers**. That ought to be changed.

Senator **Hollings**. Yes.

Judge **Panner**. Let me say, I am not sure it would make a lot of difference. In my district, even if you change the statute, it wouldn't make a lot of difference, because we don't appoint panel attorneys unless there is a conflict, and I think that is generally true.

In other words, the fact is, you need the panel attorneys because of conflicts in these massive drug cases. What is happening in particular is that the Federal defender can only represent one defendant in the multiple-party cases.

Senator HOLLINGS. Right.

CHANGE FEDERAL DEFENDER STATUTE

Judge PANNER. The defenders are really being used in most districts. It wouldn't hurt to change the statute, but I don't think it is a big item.

Senator BUMPERS. The only person I can think of who might raise the issue of whether they were complying with the law was the American Trial Lawyers Association, who wanted four panel attorneys appointed.

Judge PANNER. The ABA.

Judge ARNOLD. It is in the statute, and we feel obligated to comply with it. We have interpreted it to require that about 25 percent of the appointments on the average go to panel attorneys.

Senator BUMPERS. When you were on the district, Judge Arnold, did you do that? Did you scrupulously try to see that a significant number of panel attorneys were appointed? You didn't have that.

Judge ARNOLD. There is no Federal public defender in Arkansas. I looked into it a couple of years ago, and we don't have the caseload, even if you combine the Eastern and the Western Districts, which you can do; you can combine two adjacent districts.

Senator HOLLINGS. You think it is all well-conceived, and you don't need one in Arkansas.

Judge ARNOLD. I think we could use one, I really do.

Senator HOLLINGS. There you go.

Judge ARNOLD. I really think we could.

Senator HOLLINGS. I want to yield, if you don't mind, to Mr. Karam, from the Administrative Office. Do you have some comments?

Mr. KARAM. Yes, sir; if I may. Mr. Chairman and Senator Bumpers, on behalf of Mr. Mecham, the Director of the Administrative Office of the U.S. Courts, I thank you for the opportunity to appear and explain the needs of the Administrative Office for fiscal year 1990.

I am afraid I don't have a much more pleasant story to tell you than Judge Arnold did. Mr. Mecham cannot be here today and has asked me to extend his apologies. He also asked me to voice his thanks to the committee for the help it has given to the Judiciary in the past.

PREPARED STATEMENT

My name is Raymond Karam, as you mentioned. I am the Assistant Director for Administration, and with your permission, Mr. Chairman, I would submit Mr. Mecham's prepared statement for the record.

Senator HOLLINGS. It will be included.

[The statement follows:]

STATEMENT OF L. RALPH MECHAM, DIRECTOR, ADMINISTRATIVE OFFICE OF THE U.S. COURTS

I. EVOLUTION AND MATURITY OF THE ADMINISTRATIVE OFFICE

The Administrative Office has evolved and matured since its creation in 1939, from an organization that essentially provided basic administrative support to the

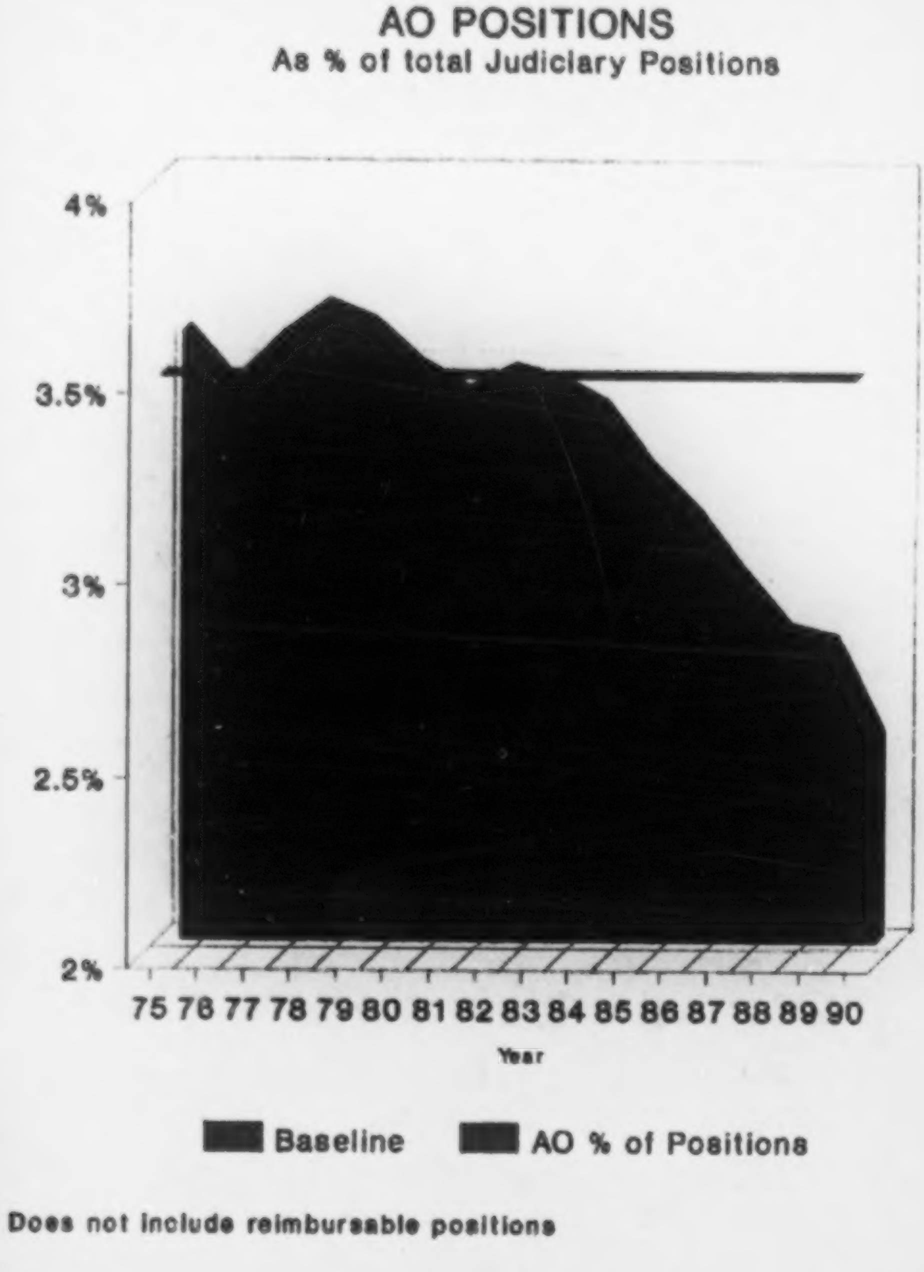
Federal courts, to one which now provides complex legal, program and automation support to a greatly expanded Judicial family. The original essential mission of the Administrative Office was to provide fundamental administrative support in the areas of procurement, facilities management, payroll, accounting, budget, statistics collection, and personnel.

In the last 20 years, the Administrative Office has juggled increasing demands to provide additional support services in legal, program and automation areas in response to the growing complexity of judicial administration, and the requirements of implementing new programs resulting from legislative and Judicial Conference actions.

When I came to the Administrative Office in 1985, the ability of the agency to handle all of its responsibilities was at the breaking point. The inability of the existing administrative systems to handle the growth and diversity of modern administrative demands, and the growth in other areas of responsibility had stretched the Administrative Office's capabilities to its limits.

II. THE SOURCE OF THE ADMINISTRATIVE OFFICE RESOURCE PROBLEM

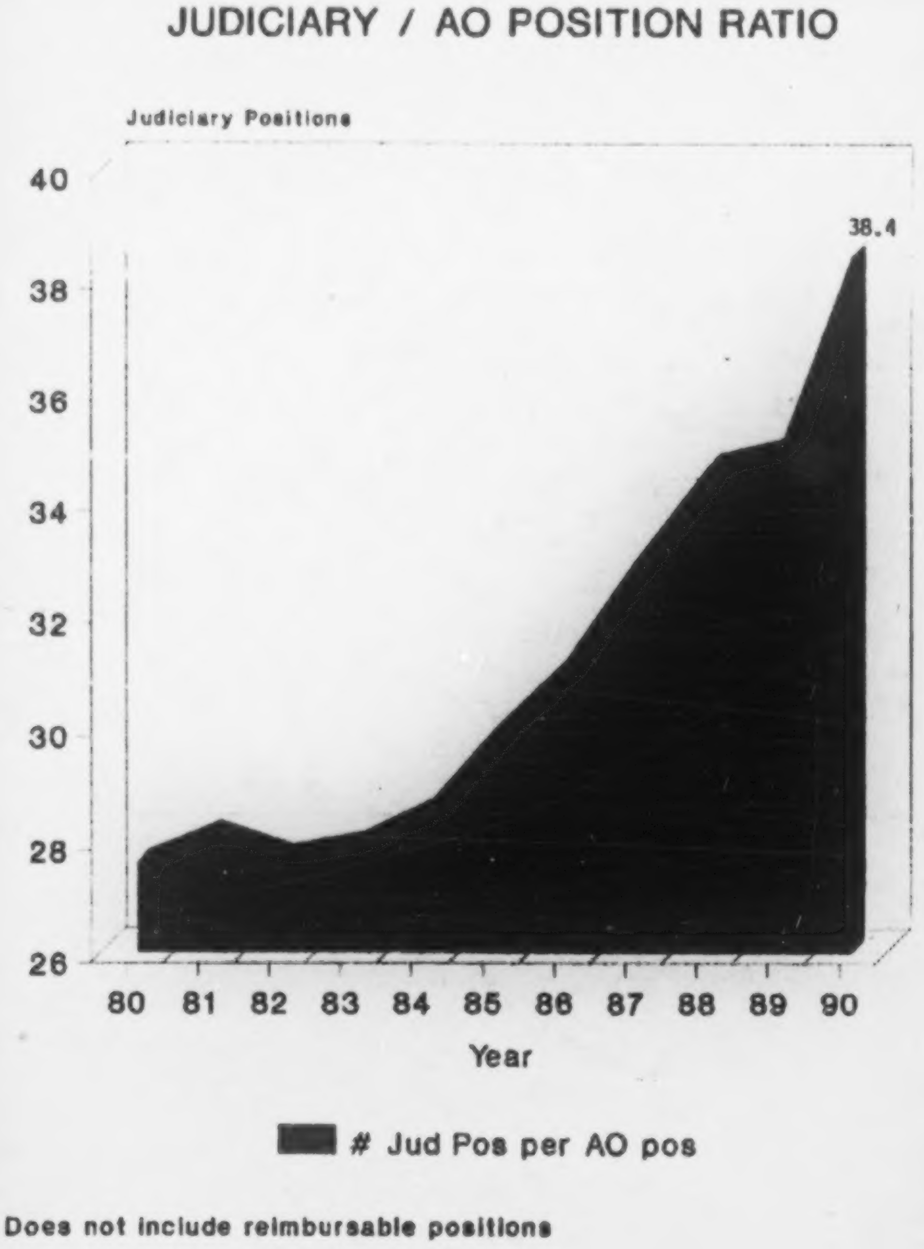
During the 1970's and early 1980's the staff of the Administrative Office increased at a rate consistent with that of the Judiciary. This rate of growth would have been sufficient if the agency's responsibilities had remained constant; but, this was not the case. The Administrative Office's workload increased at a faster rate, not only because of growing demands for additional administrative support, but also because of new activities in automation support, and new legislated tasks. For this reason, the agency's rate of growth has been insufficient to keep up with its increased responsibilities. Even worse, starting in the mid-1980's, the Administrative Office staff experienced a steady decline in its size relative to the growth in the Judiciary. To illustrate this point, the size of the Judiciary grew 37 percent between 1984 and 1989. By comparison, the Administrative Office staff grew 12 percent. One person was added to the Administrative Office staff for every 88 people added to the Judiciary's staff. The majority of this increase in the Administrative Office had to be applied to automation support.



[Chart 1: AO Positions]

Chart 1 shows that for the 10 year period 1975 to 1984, the Administrative Office staff represented an average of 3.5 percent of the total Judiciary staff. In relation to this 10-year baseline, the Administrative Office's relative size began to decline. In 1989, the Administrative Office staff represents only 2.8 percent of the total. Without the reimbursable positions, the 1990 projection is that we will be down to 2.5 percent. For an agency of only a few hundred employees, this decline has had a severe impact which I discuss later in my testimony.

Note: Even if all of the 164 reimbursable positions requested in the courts' S&E budget are included in this analysis, the AO's staff size would be 3.2 percent, which is still below the 10 year baseline.

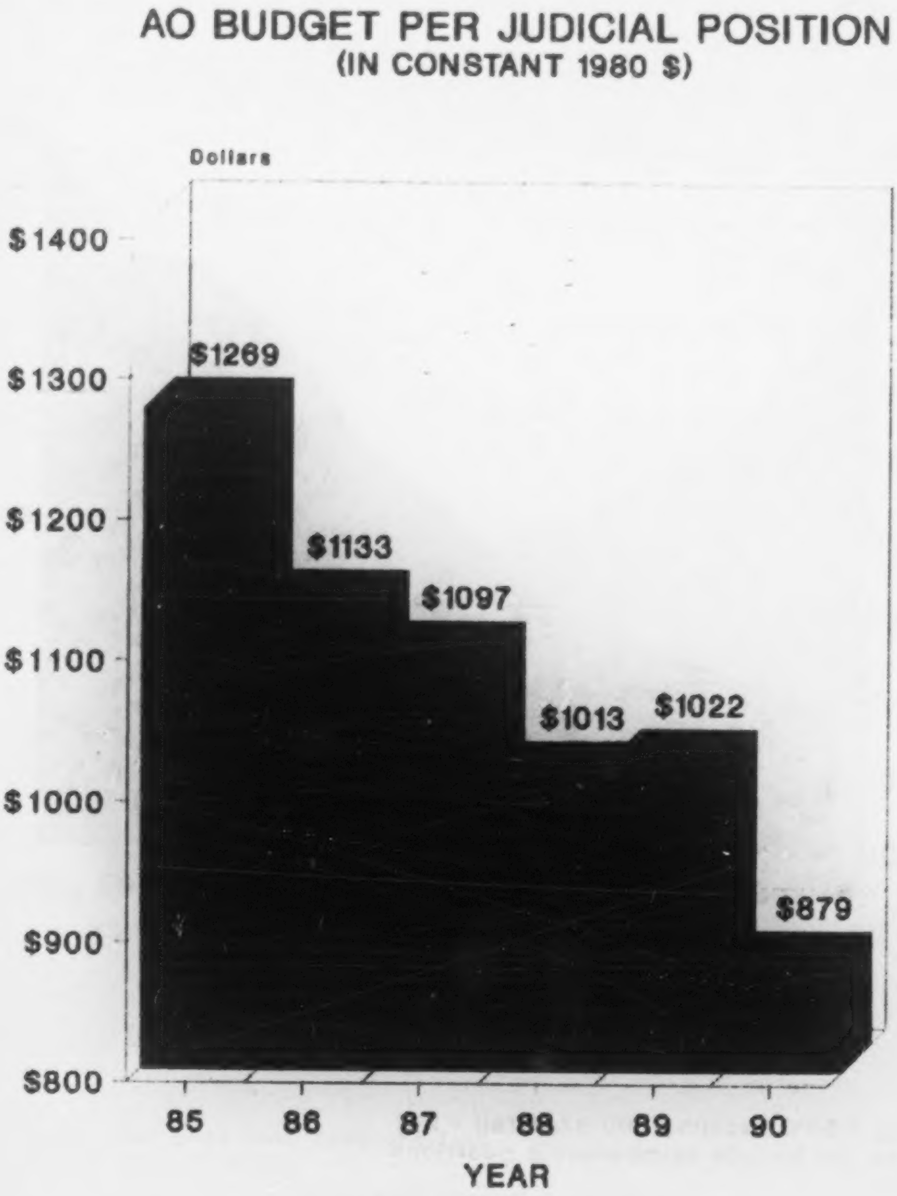


[Chart 2: Judiciary/AO Position Ratio]

As you can see in Chart 2, the ratio of court employees serviced by Administrative Office employees grew from 28:1 in 1980, to 35:1 in 1989. The estimated ratio for 1990 is 38:1. This represents a 36 percent increase over 1980. I wish I could say that all of this difference is due to our strides in improving productivity. Some of it is.

But the truth is that it also reflects our inability to provide adequate support to the courts.

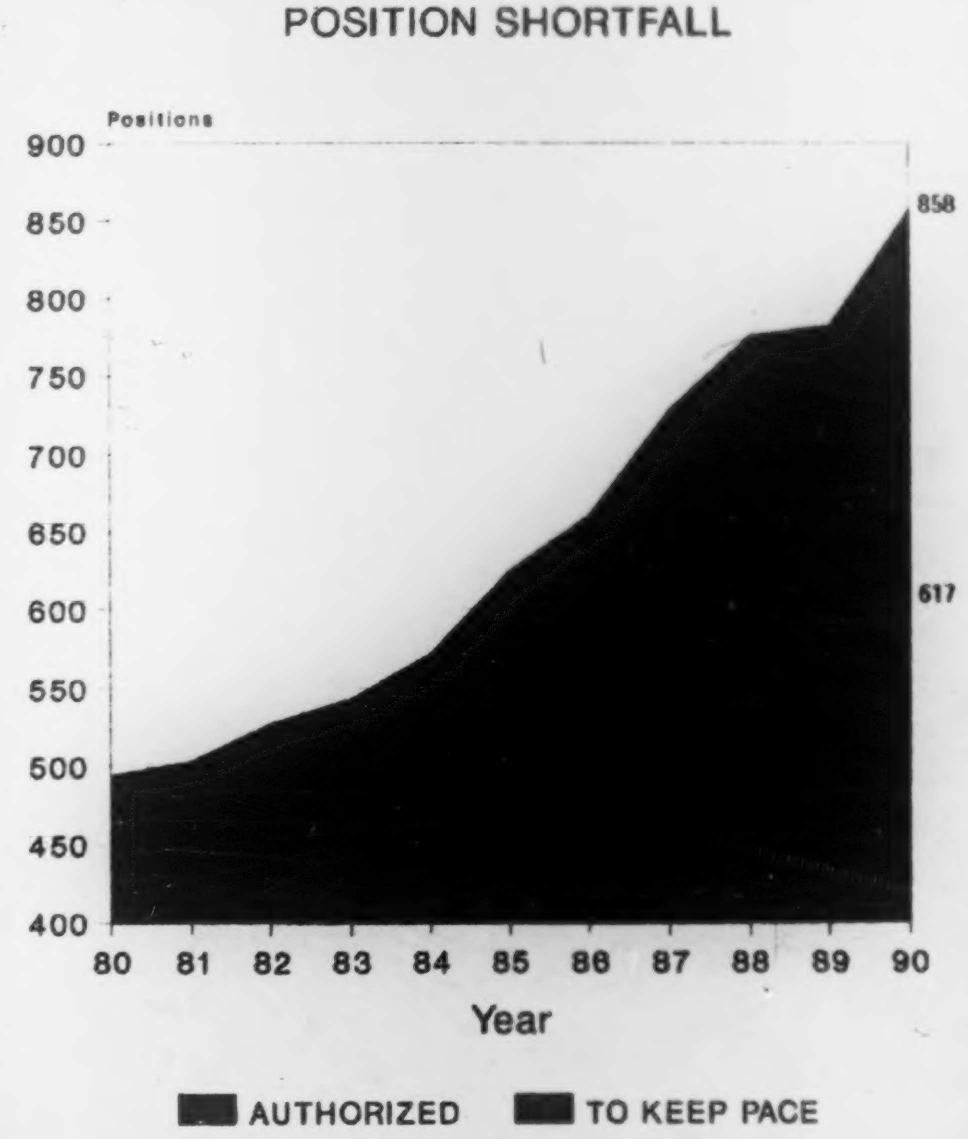
Note: Including all 164 reimbursable positions, the ratio of judiciary to AO positions would be 30:1. If only 90 reimbursable positions are included, the ratio would be 34:1.



[Chart 3: AO Budget per Judicial Position]

At the same time that the number of court positions supported by each Administrative Office position increased, the dollars available in the Administrative Office's budget to support each court position decreased. Chart 3 shows that the Administrative Office's budget per court employee decreased, in constant dollars, from $1,269 in

1985 to $1,022 in 1989, a 20 percent loss. The estimate of $879 for 1990 represents a 31 percent reduction from 1985.



With 3.53% baseline, '90 shortfall = 241
Does not include reimbursable positions

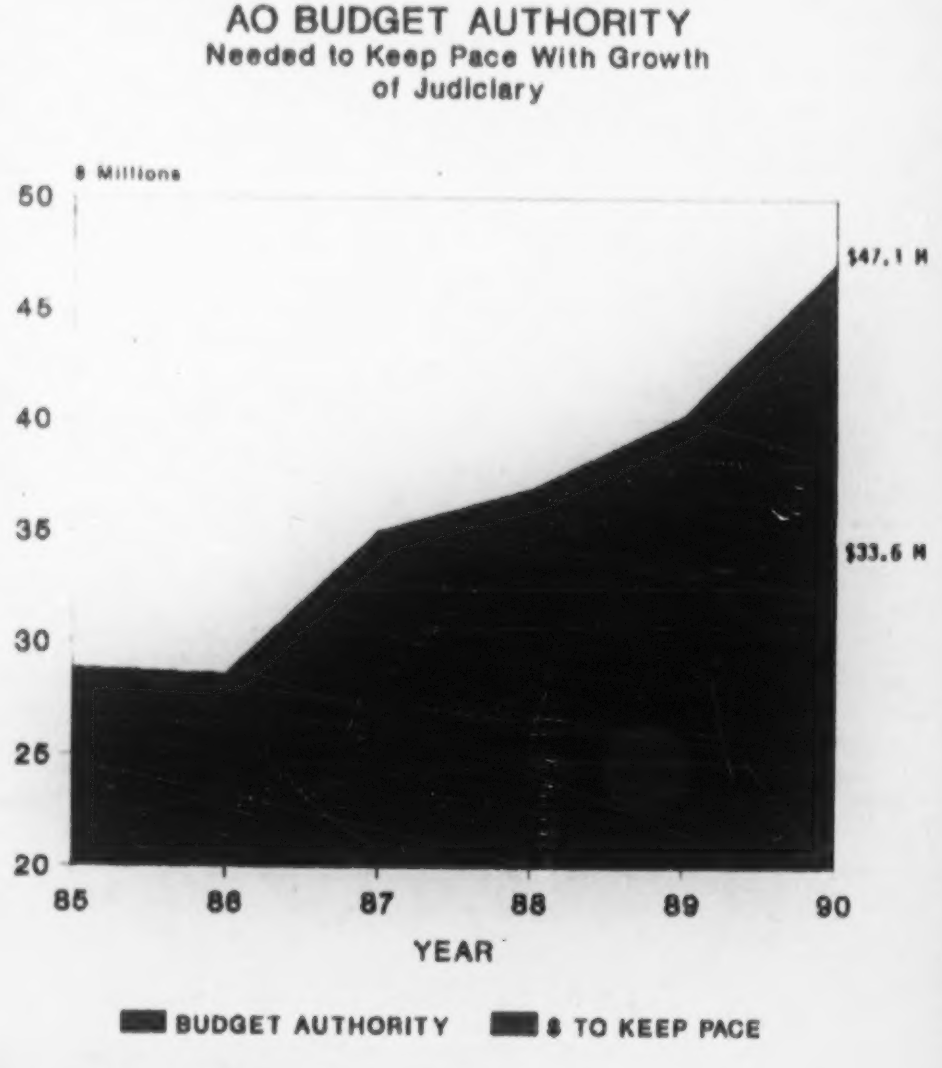
[Chart 4: Position Shortfall]

Chart 4 demonstrates that if the rate of growth in the Administrative Office had kept pace with the growth in the Judiciary, at the 1975–84 baseline level, the Administrative Office would require approximately 240 additional positions just to maintain its ongoing services to the courts. However, the responsibilities of the Administrative Office have increased.

This is not to say that the Administrative Office needs to maintain precisely the 3.53 percent relationship to Judiciary staff that we had during the baseline period.

However, this comparison gives a sense of the magnitude of the decline experienced by the Administrative Office staff in relation to the Judiciary in recent years.

Note: The 617 figure for the 1990 authorized staff does not include 164 reimbursable positions requested for automation support to the courts. Including these positions in the 1990 figure would still show a shortfall of 77 positions. If only 90 reimbursable positions are included, the shortfall would be 151.


AO BUDGET AUTHORITY
Needed to Keep Pace With Growth of Judiciary

Using 1985 base level, 1990 shortfall equals $13.531 million

[Chart 5: AO Budget Authority]

The Administrative Office's share of the Judiciary's budget has decreased by almost a full percentage point in the last 5 years. Because of the Administrative Office's small budget, this has been a significant loss. Chart 5 shows that if the Administrative Office's share of the Judiciary's budget were maintained at the 1985 level, our 1990 budget request would be $13.5 million more than we are requesting: a 40 percent increase over our current request.

III NEW REQUIREMENTS AND DEMANDS ON THE ADMINISTRATIVE OFFICE

The Administrative Office has been assigned several new responsibilities in recent years without commensurate staff increases. This has contributed to the growing imbalance between resources and responsibilities. These new responsibilities came as the result of both legislative actions and increasing requirements for support from the Judiciary. There has been a significant growth in automation and program support needs, as well as support for the committees of the Judicial Conference.

AUTOMATION

One of the most significant areas of increased activity has been the introduction of automated systems in the Judiciary. The number of automated systems in the courts that are supported by the Administrative Office has increased from zero in 1983 to an estimated 500 by 1990. Since 1978, the Administrative Office's Systems Services Division staff has grown from 38 to 126, an increase of more than 300 percent. During the same period, the remaining areas in the Administrative Office grew less than 20 percent.

The need to support automation in the courts rapidly grew beyond our planned resources. As a result, we were forced to focus our efforts in this area at the expense of other programs.

SUPPORT TO THE JUDICIAL CONFERENCE

Judicial Conference requirements for support from Administrative Office staff have grown significantly in the past few years. The Committee structure of the Judicial Conference of the United States was reorganized in October, 1987. Twenty-four committees were established to advise the Conference on matters of policy and administration of the courts in their areas of interest. The changes have helped provide strong and consistent direction to the Judiciary during a period of resource shortages. A list of these committees is attached. (See Attachment 1).

One result of the reorganization has been greater Committee activity, and increased involvement in administrative areas. Because the Administrative Office provides staff support to the Committees and Subcommittees, the increased activity has meant additional demands on our resources. In 1988, 66 Committee meetings were held, while in 1987, only 40 were held. This was a 65 percent increase. We expect even more activity this year.

In my testimony last year, I told you that 37 staff years were devoted to support of the Judicial Conference and its Committees in 1987. In 1989, we expect to expend 57 staff years for this purpose. In other words, the staff time required for this vital service has increased by 54 percent in 2 years, yet we have received no additional staff to provide it.

RECENT LEGISLATION AND PROGRAM CHANGES

Sentencing Guidelines.—The implementation of sentencing guidelines has resulted in a tremendous increase in the workload of the Probation Division, including: a sentencing guideline manual; new pre-sentence report forms; administrative support to the Sentencing Commission; and extensive nationwide training in the guidelines' many complex requirements. I expect our work in this area to expand even more.

Bankruptcy Increases.—Bankruptcy legislation and the growth in the bankruptcy workload due to the Nation's economy have created additional requirements for the Bankruptcy Division. The Administrative Office has developed case management strategies and systems, and now, upon request, sends a team of experts to provide on-site assistance in this area.

Judicial Improvements and Access to Justice Act.—The recently enacted Judicial Improvements and Access to Justice Act resulted in 54 new assignments for the Administrative Office. Although each assignment will require additional staff resources, no funds were appropriated to the Administrative Office for these purposes. While some of the assignments are minor, the more significant ones include: issuing new regulations and guidelines related to court interpreters, and developing and implementing an arbitration program. The most significant new assignment is providing staff support to the newly established Federal Courts Study Committee. The work of this important Committee will be far-reaching and will seriously tax the Administrative Office's already thin staff resources.

Anti-Drug Abuse Act.—The Anti-Drug Abuse Act is a sweeping piece of legislation with many direct and indirect effects on the Judiciary. The increase in Federal drug enforcement agents and Federal prosecutors will increase the number of criminal case filings and the number of persons under supervision. The Administrative Office is required to establish a demonstration program of mandatory drug testing of criminal defendants in eight judicial districts.

Other Recent Legislation.—Other legislation has resulted in additional work for Administrative Office staff. Attachment 2 lists some recent legislation which has impacted us.

In the personnel area, there have been major changes in retirement and benefits programs requiring the development of new procedures, guidelines, and forms. More paper handled means more time spent.

In program areas, the staff has played an instrumental role in both the formulation and implementation of new legislation. They have drafted legislation, regulations and guidelines, prepared new manuals and forms, designed training programs for court personnel, and developed new procedures and administrative systems.

We are dedicated to performing these additional responsibilities to the best of our abilities; in fact, one of my primary efforts during the last several years has been to focus clearly on the basic support nature and role of the Administrative Office. However, without additional resources, it is becoming nearly impossible to fulfill our obligations and to provide an adequate level of administrative and program support.

IV. IMPACT OF RESOURCE SHORTFALL

The growing imbalance between resources and responsibilities has created severe hardships for the Administrative Office in providing necessary services. In the face of growing backlogs,we have been forced to make service cutbacks. We are not processing invoices in a timely manner. Filing of administrative papers has fallen behind 4 to 6 months in some offices. Simple procurements are delayed for months. Travel to serve the courts has been cut. We have an insufficient inventory of equipment or supplies on hand. We have not been able to buy needed PC's and other equipment. We do not provide necessary training for our staff. Our accounting system is severely outdated and cannot produce timely reports. Too much of our effort is devoted to keeping afloat on a day-to-day basis, rather than managing and planning for the future.

In the past we have accepted new responsibilities without consideration of their impact on our workload. In an attempt to get a better grasp on the impact future assignments will have on our workload, I have asked my staff to prepare a workload impact analysis of all future legislative mandates or Judicial Conference requirements.

V. MANAGEMENT ACTIONS

I have taken several measures to reduce Administrative Office costs in an effort to minimize the impact that lack of funding has on our ability to provide services to the court. I imposed strict limits on travel, equipment purchases, training, and hiring. We are conducting several pilot projects to determine if economies can be gained through delegating certain operational tasks to the administrative units in the courts, such as giving courts more discretion in the use of funds. In order to carry out our responsibilities for financial audits of the courts, we are supplementing our limited audit staff by using contractors.

Although current efforts to redirect existing resources have allowed us to make it through the past year, in the long term, support to the courts will diminish to an unacceptable level unless solutions to the resource shortages are found.

The Judicial Conference Committee responsible for monitoring the operations of the Administrative Office has endorsed our need for additional resources by unanimously adopting a resolution at its most recent meeting: "* * * supporting increased resources for the AO in order for it to be able to discharge its ongoing responsibilities in areas such as automation, contracting, the Federal Courts Study Committee support, sentencing guidelines, and the implementation of statutes enacted in 1988".

In a shortage situation, it is always difficult to focus on the long-term. Nevertheless, good management requires a long term perspective. To do this, I set goals for the Administrative Office and established a management tasking system. Under this system, each division and office establishes objectives for the coming year. I periodically meet with division and office staff to evaluate the progress we have made.

This enables us to focus our limited resources on the most important objectives. Without adequate resources, however, we will not be able to meet our goals.

VI. FISCAL YEAR 1990 BUDGET REQUEST

Our 1990 budget request is designed to meet our responsibilities. We understand that you have budget constraints and other priorities in addition to our needs. We have designed a request that will allow us the flexibility to support adequately both automation and other court programs. The Judiciary's 1990 request for the Administrative Office totals $33,600,000. This is the same amount appropriated for fiscal year 1989. This does not mean that the Administrative Office does not have additional needs in fiscal year 1990; it does.

CONSOLIDATION OF COURT AUTOMATION FUNDING

No increase in funding over last year is requested because $4,650,000 for court automation support needs, which was previously included in the Administrative Office's budget, is proposed for transfer to the 1990 "Salaries and Expenses" appropriation to reimburse the Administrative Office for support of court automation. Under this new arrangement, the courts' budget will include all court automation funds and will reimburse the Administrative Office for automation services provided.

This transfer of responsibility for funding the courts' critical automation program has the full support of the Judicial Conference. It has been endorsed by the Executive Committee and the Budget Committee. This transfer is proposed so that all court automation funds will be consolidated in one appropriation to facilitate better management and control of these resources. This will be accomplished by putting before one Committee of the Judicial Conference all of the personnel, software, and hardware requirements of the automation program so that decisions on resource allocations can be made consistent with program needs. Even in view of the increasing demands on the Judiciary's budget for the courts, automation is so critical to coping with an increasing caseload that this transfer is essential if automation is to be supported adequately. It is clear that the Administrative Office, despite its best efforts, has not been able to provide the level of service necessary with the resources it has.

Another benefit of this transfer is that essential resources will become available in the Administrative Office budget to meet other urgent needs. Given minimal budget increases since the advent of Gramm-Rudman-Hollings, the Administrative Office has had to dedicate resources to supporting court automation that were required elsewhere in such areas as personnel services,space and facilities, equipment procurement, maintaining financial records, collecting statistics, and providing program support. Under this proposed arrangement, court automation will not drain resources from other Administrative Office priorities, will receive the high level attention it deserves, and choices on allocations for all aspects of court automation will be made in one forum—the Committees of the Conference.

PROPOSED USE OF FUNDS PREVIOUSLY DEDICATED TO COURT AUTOMATION

By virtue of the transfer of funding for court automation to the "Salaries and Expenses" appropriation, $4,650,000 and 90 positions are requested in the Administrative Office appropriation to meet other needs, without an increase over last year. These funds will be used for three broad purposes. First, $1,750,000 and 90 positions will be used to correct severe shortages in our administrative support, legal and program areas. Second, $1,870,000 will be used to replace obsolete ADP equipment and provide training. Third, $1,030,000 is needed to cover uncontrollable cost increases.

In recognition of the extremely tight budget situation, we will phase in the addition of the 90 positions. Only $1,750,000 to fund 36 staff years is requested in 1990.

ADDITIONAL PERSONNEL NEEDED IN CRITICAL SHORTAGE AREAS

Administrative Service Needs.—Of the $1,750,000 and 90 positions, approximately $1 million is needed for partial funding of 54 positions to correct severe understaffing in administrative support areas. Additional staff will be provided for personnel, contracting, procurement, financial management, automation, space planning, and clerical support.

—*Personnel:* The Administrative Office's Personnel Division serves the entire court system, including judges, magistrates, clerks, librarians, clerical staff, and pretrial and probation officers, as well as all Administrative Office, Federal Judicial Center, and U.S. Sentencing Commission personnel. If our 1990 budget proposal is adopted, close to 24,000 people will require personnel services. Over the period from 1984–89, court staff served by the Administrative Office Personnel Division increased by 37 percent. In contrast, during the same period, the Court Personnel Branch increased by only 11 percent. In addition, new and expanded programs, such as the Federal Employees' Retirement System (FERS) and the Thrift Savings Program have been instituted, along with programs unique to the Judiciary, such as the Magistrates retirement program. This has strained Personnel Division staff beyond the breaking point.

—*Contracts and Services:* Law book orders by judges are facing 3 to 4 months delays in processing. Invoice processing is backlogged 90 days. The volume of contracts has increased, along with their complexity, especially in the automation area, where countless hours have been spent defending a bid protest. Other areas where there has been a tremendous increase in contracting activity are the drug testing area in support of the new Anti-Drug Abuse Act, and the space and equipment area, due to increasing delegations of authority from the General Services Administration.

—*Financial Management:* Our accounting and financial management systems are remnants of systems that were outdated in the 1970's. While I am proud of the efforts of our staff, the financial management area has been underfunded and understaffed, and we desperately need additional personnel to modernize the budget, accounting and audit systems.

The establishment of new pilot projects has created a multitude of budget execution responsibilities. The budget decentralization pilot program requires detailed monitoring of the expenditures of the participating courts. The volume of financial transactions has also grown significantly as a result of higher numbers of invoices, vouchers, and contracts processed. In turn, this has increased the audit workload.

In addition, more systems accountants are needed to complete the implementation of the Central Accounting System, which will allow us more efficiently to track and use appropriated funds.

—*Space Planning:* The space and facilities program managed by the Administrative Office will exceed $300 million in 1990. Our present efforts to manage this program are not adequate, and we do not have sufficient staff to devote to forecasting and planning the Judiciary's space and facilities needs. The workload in this program has increased dramatically as we are working to house the courts adequately and plan for the future. This has been exacerbated by the continued unilateral assignment of an increasing number of space management responsibilities to the Judiciary by the General Services Administration.

Legal and Program Support Needs.—The Administrative Office provides legal and program support for 22,963 people. This includes: 156 Circuit Judges; 575 District Judges; 16 Claims Court Judges; 291 Bankruptcy Judges; 307 Magistrates; 642 Federal Defenders and support staff; 5,535 Judicial Support Staff; 5,300 Probation and Pretrial Services Staff; and 10,141 Clerk's Office and other court personnel. Approximately $750,000 is needed for partial funding of 36 positions to augment our legal and program support functions. Staff will be added for probation and pretrial services, management analysis and review, and to establish an Article III Judges group.

—*Probation and Pretrial Services:* As an example of the growth in this area, the number of clients in the Drug Aftercare program has grown from 6,500 in September 1985 to over 15,000 today. This has resulted in an 80 percent increase in alcohol and drug treatment contracts, which the Probation Division helps oversee. Without additional resources, this Division cannot continue to cope with explosive program growth.

—*Management Assistance:* Additional positions are needed to provide management assistance, conduct a variety of program analyses, and review program operations. These efforts will both strengthen program direction and coordination, and help the courts develop more cost-effective procedures to cope with an ever-expanding workload and tight resources. These positions will be located throughout the program divisions of the Administrative Office.

—*Article III Judges Group:* A need for a proactive support unit dedicated to serving Article III Judges, and keeping them informed on legal, legislative, and administrative matters has been apparent for some time. This need will grow as the complexity of the legal environment, and the growing workload of the courts place more demands on judges and their immediate support staff. The primary function of this Group would be to provide expertise and assistance on matters ranging from complex legal issues to administrative support. The Group would serve as a liaison, troubleshooter and ombudsman for Article III Judges, and serve as a nationwide focal point to provide advice and assistance in case management, automation, court governance, rule-making, and administration. With the assistance of the Federal Judicial Center, it would conduct judicial orientation and training. The Group would also prepare and produce judicial publications and manuals; assist in the analysis of judicial resource needs; and provide staff support to the Judicial Conference and Committees, as required. Presently, the entire Administrative Office performs these functions in a diffused way, which is inefficient and often frustrating to the judicial officer seeking assistance or information.

OBSOLETE ADP EQUIPMENT NEEDS REPLACEMENT

A total of $1,870,000 of the request is to replace obsolete ADP equipment in the Administrative Office, purchase office automation equipment, set up a data communications network, and train court personnel.

—*Mainframe Computer:* The current mainframe computer has reached the end of its useful life and needs replacement. Many components of the system were purchased as used equipment and are literally "worn out"; the entire computer system is on the verge of collapse. Of the total amount requested, $1,070,000 will be used to replace the aging computer, based on a lease-to-purchase option.

—*Office Systems:* Funding of $650,000 is requested to initiate a replacement program for the procurement of compatible word processors and microcomputers. Currently, many Administrative Office systems are not compatible, largely due to the age of existing machines. This noncompatibility results in frequent retyping of data and text within and between offices. Increased productivity and efficiency will result with the installation of new compatible equipment. The funds requested will be used for systems acquisition and installation, training, maintenance, supplies, software, and technical support services. It is estimated that approximately 100 work-stations will be installed in fiscal year 1990.

—*Data Network Link:* The Long-Range Plan for Automation in the United States Courts calls for the installation of a nationwide data communications network in the Federal Judiciary. This network will provide a standardized mechanism to link all data processing and office automation equipment nationwide. Funding for equipment to pilot test the courts' network at the Administrative Office has been requested in the "Salaries and Expenses" appropriation. In order to provide communications capability in the Administrative Office, $100,000 is requested in the Administrative Office appropriation for the installation of a local area network with a communications server.

—*Conduct Training:* Also included in the "Salaries and Expenses" request are funds to conduct operational training for court employees in those areas where training is not provided by the Federal Judicial Center. A companion request of $50,000 is included in the Administrative Office budget so that our staff can serve as faculty at these training sessions.

UNCONTROLLABLE COST INCREASES

Funds totaling $1,030,000 are needed to cover uncontrollable cost increases in such areas as health benefit costs, within grade salary advancements, increases in space rental rates, and the annualized cost of the 1989 pay raise.

VII. CONCLUSION

For the last 2 years, we have proposed budgets with significant increases which, for the most part, were not approved by the Congress. This year, we have developed, along with the Judicial Conference, a way to address our resource shortage crisis by redistributing responsibility for funding court automation support. We believe this is an efficient and effective solution to shortages, in the automation area, and will also allow us once again to execute our other important functions in support of the courts. This request is constrained. In fact, we could effectively use many more positions beyond those requested. We are willing to continue to tighten our belt as we seek ways to do our job better. Our 1990 budget will allow us to manage our present mandates from the Congress and the Judicial Conference, and I believe it is an excellent one. I hope we will have your support.

Thank you Mr. Chairman, for the opportunity to present the budget request of the Administrative Office. I am prepared to answer any questions you may have.

ATTACHMENT 1

JUDICIAL CONFERENCE OF THE UNITED STATES

COMMITTEES

Executive Committee; Administrative Office Committee; Administration of the Bankruptcy System Committee; Bicentennial of the Constitution Committee; Budget Committee; Ad Hoc Committee on Cameras in the Courtroom; Codes of Conduct Committee; Court Security Committee; Criminal Law and Probation Administration Committee; Defender Services Committee; Federal Court Study Committee; Federal-State Jurisdiction Committee; Habeas Corpus Review of Capital Sentences Committee; Intercircuit Assignments Committee; International Appellate Judges Conference of 1989/90 Committee; Judicial Branch Committee; Judicial Ethics Committee; Judicial Improvements Committee; Judicial Resources Committee; Administration of the Magistrates System Committee; Pacific Territories Committee; Review Circuit Council Conduct and Disability Orders Committee; Space and Facilities Committee; Rules of Practice and Procedure Committee.

ATTACHMENT 2

RECENT LEGISLATION AFFECTING THE ADMINISTRATIVE OFFICE

Comprehensive Crime Control Act of 1984; Sentencing Reform Act of 1984; Bail Reform Act of 1984; Insanity Defense Reform Act of 1984; Criminal Justice Act Revision of 1984; Victims of Crime Act of 1984.

Criminal Fine Enforcement Act of 1984.

Criminal Justice Act Revision of 1986.

Anti-Drug Abuse Act of 1986.

Drug and Dependent Offenders Treatment Act of 1986.

Criminal Fine Improvements Act of 1987.

Anti-Drug Abuse Act of 1988.

Bankruptcy Amendments and Federal Judgeships Act of 1984.

Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986.

Magistrates' Retirement Parity Act of 1987.

Bankruptcy judges' and magistrates' salary legislation (Public Law 100-202).

Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988.

Judicial Improvements and Access to Justice Act of 1988; Rules Enabling Act; Arbitration Amendments; Federal Courts Study Act; Court Interpreter Amendments Act; Jury Selection and Service Act.

Childhood Vaccine Injury Act of 1986.

Electronic Communications Privacy Act of 1986.

Tax Reform Act of 1986.

Fair Housing Amendments Act of 1988.

Federal Employees Liability Reform and Tort Compensation Act of 1988.

Insider Trading and Securities Fraud Enforcement Act of 1988.

Plant Closing Act of 1988.

Veterans Judicial Review Act of 1988.

Video Privacy Act of 1988.

Mandatory jurisdiction of the Supreme Court (Public Law 100-352), 1988.

New Judicial building in Washington, D.C. (Public Law 100-458), 1988.

PreFERS magistrate retirement parity (Public Law 100-53), 1987.

Matters of interest to the Judiciary in the December 1987 Continuing Appropriations Resolution (other than funding matters) (Public Law 100-202), 1987.

Race to the Courthouse (Public Law 100-236), 1987.

Childhood vaccine injury compensation (Public Law 100-203), 1987.

Cost-of-living salary supplements for judicial employees in Alaska and Hawaii made non-taxable, (Public Law 100-) 1988.

Bankruptcy judgeships (Public Law 100-) 1988.

Firearms in Federal courthouses (Public Law 100-) 1988.

Northern and Southern divisions for Maryland (Public Law 100-487), 1988.

Common Law tort liability and judicial employees (Public Law 100-) 1988.

Thrift savings program for Article III judges (Public Law 100-) 1988.

Increase of Circuit Executive salaries (Public Law 100-459), 1988.

MISSION OF THE ADMINISTRATIVE OFFICE

Mr. Karam. I will just take a couple of minutes of your time to summarize the main points. The Administrative Office has as its sole mission the support of the U.S. courts, and over the last 10 years, our ability to adequately support the courts has been seriously eroded, and this condition is reaching crisis proportions in some areas.

To illustrate what has been happening, I will give you a few statistics, with your indulgence. In the last decade or so, the number of judicial offices has increased by about 50 percent. The size of the Judiciary as a whole has grown by some 37 percent in the last 5 years alone.

The Administrative Office has increased by one-third of that, by about 12 percent. What has happened, in effect, is the support element, the Administrative Office, has not kept pace with the growth of the elements being supported, which are the courts.

SHORTFALL COMPOUNDED

This shortfall has been further compounded because of the growth of automation in the courts. The automation support part of the Administrative Office has increased some 15 times faster than the rest of the Administrative Office. So not only has the Administrative Office shrunk in relation to the growth in the courts; administrative support and program support of the courts, that is, the nonautomation parts of the Administrative Office, have been severely curtailed.

Our fiscal year 1990 request, if approved, will go a great way toward correcting some of the deficiencies. We are requesting, Mr. Chairman, $33,600,000 for the Administrative Office in fiscal year 1990, which is the same amount which was appropriated in 1989.

In doing so, we propose that $4,650,000 of the fiscal year 1989 base be transferred to the "Salaries and expenses" appropriation for the support of court automation. Having done that, as to the Administrative Office, the $4,650,000 restitution in that account would essentially be the following:

It would provide 36 staff-years for the administrative and program support of the courts that has been so badly eroded over the last few years. A new computer to replace the one we currently have, which is essentially worn out, would be funded, and as the person in charge of getting out the payroll every 2 weeks, I am particularly sensitive to this very urgent need.

Funding for increases in uncontrollables, such as the rent, we have to pay to the General Services Administration. Increased health benefits and the 1988 pay raise make up the remainder.

We believe that the budget we are presenting, Mr. Chairman, is an excellent way to help rationalize reallocation of resources for automation of the courts by putting them all in one place under the jurisdiction of one decisionmaking body of the committee of the Judicial Conference, and it will help to assure adequate resources are available with these essential automation programs.

As importantly, our budget, we believe, will help the Administrative Office discharge its responsibilities in support of the courts other than automation. We believe this request deserves the support of the committee, and we respectfully ask for your help. If there are any questions that I might answer, Mr. Chairman, I would be happy to.

Senator **Hollings**. Just to get a general feel on automation in my mind, I would ordinarily say that automation cuts back on personnel, but I find you are both automating and increasing personnel. Tell me about it.

Mr. **Karam**. Well, it seems, and I get this from people who are more expert than I in automation, that as you are going into the automation mode, there is a transition period, usually of years when you have to continue to do the work that you are doing. Then automation catches up with you; you then are able to do the work that you do not only with less personnel, in some instances, but also much more efficiently and effectively.

AUTOMATION WILL SLOW EROSION

Judge Arnold was saying one of the problems we are encountering in running our Judiciary is that its effectiveness is slipping very badly and eroding, so that automation will help us to catch up in that race.

Senator **Hollings**. Senator Kasten.

Senator **Kasten**. I don't have any questions for this panel.

Senator **Hollings**. I have got one more. Yes; go ahead, Dale.

SENIOR JUDGES

Senator **Bumpers**. Mr. Chairman, I was just going to ask Judge Arnold this question. If we were to decouple the Judiciary on this pay problem from congressional pay, there is some concern here, and I don't think it is pervasive or volatile, but there are some people here who are concerned about senior judges. I assume that nobody ever retires from a judgeship any more; they all take senior status.

Judge **Arnold**. There are some who completely retire. There are 16 of them, I believe.

Senator **Bumpers**. How many senior judges are on senior status?

Judge **Arnold**. Three hundred.

Senator **Bumpers**. Fifteen are retired.

Judge **Arnold**. Sixteen are completely retired from office. That is to say, they are not judges anymore.

Senator **Bumpers**. They must have been retarded to take full retirement.

Senator **Hollings**. They are resigning.

Judge **Arnold**. They may not be as crazy as they sound, because they can practice law. They can draw their full pay, that is to say.

Senator **Hollings**. You have got Griffin Bell in there.

Judge **Arnold**. No, sir; no, because he wasn't 65 years old.

Senator **Hollings**. I see what you are talking about.

Judge **Arnold**. I am not talking about resigned people; I am talking about retired from office.

Senator **Hollings**. How many have resigned? Can you find that out for Senator Bumpers?

Judge **Arnold**. There have been, within the last 10 years, as I recall, 16 resignations. That is not a large number in absolute terms, but it is very large compared to the past.

Senator **Kasten**. Mr. Chairman.

Senator **Bumpers**. Bob, if you will, what I am trying to get at is, how would the Judicial Council feel about if we decided, as I say, to decouple? Those senior judges carry a big workload. I know some of them cover virtually a full workload, but a lot of people don't cover much of a caseload, and there is concern here for example, if we are going to give working judges $135,000 a year, why should we give a $135,000 or a $45,000 increase to somebody that isn't carrying a 25-percent workload?

Judge **Arnold**. Let me answer it this way. If I were a Member of Congress instead of a judge, I think I might well take the position for the future that the full increment of pay would not be allotted to senior judges who do no work. That is a rational reaction to the problem.

As to people who are already on board, judges who are in senior status now, I think if you tried to change it you would have a problem with the Constitutional prohibition.

SENIOR STATUS CONTRACT

Senator **Bumpers**. That is my next question. The Constitution says you can't diminish their pay. We aren't going to diminish their pay; we just aren't going to give them an increase.

Judge **Arnold**. The answer that they would give at least and probably that I would give is this: When I signed on in 1978, part of the contract that was made with me was that if I served 15 years and got to be 65 years old, I would have the senior-status option with full pay. And every year I work, I work under the terms of that contract.

So if you change it with respect to people already on board, you are retroactively changing the terms of the deal that they made when they were sworn in.

Senator **Bumpers**. Are you saying on the other hand, we talk about what consideration, pay. On the other hand, that contract didn't require you, once you took senior status, to carry any workload, did it?

Judge **Arnold**. No, sir; in fact, our senior status judges that don't carry a workload also don't have a staff.

Judge **Panner**. Let me say this, Senator. I think that there is a misperception here about the number of senior judges that aren't working, I really do. I think we need to get to you some statistics, because in the ninth circuit, I know all the seniors very well, and I don't know 5 percent of them that aren't working very hard, and, in fact, we have a difficult time getting along without them.

In our district, we have a senior judge who is carrying more than a full load. He is a great trial judge. This is generally true. There are some exceptions, but I think it is a minor misperception.

Senator **Bumpers**. What if we put a provision in saying that this salary increase will not be effective for any senior judge who carries less than a 60- or 70-percent caseload or something like that? We ought to get something for our money, shouldn't we?

Judge Arnold. I think it would be perfectly reasonable and valid as applied to judges sworn in after you pass the law.

Senator Bumpers. You still don't think it could apply to judges that are now on senior status, you don't think my suggestion would pass Constitutional muster?

Judge Arnold. I am inclined to think not.

WORKLOAD OF SENIOR JUDGES

Judge Panner. Let me suggest one problem with that percentage. Our senior judge in Oregon takes the toughest cases we have, the longest cases, not the greatest volume, so the measurement of 50 or 60 percent is very difficult. For example, right now, he is in Hawaii trying 12 combined asbestos cases that are running 8, 10, 12 hours a day, trying to finish those up for Hawaii, 1,300 asbestos cases that they can't handle. So it is hard to measure that.

But I understand you.

Senator Bumpers. I just raise this, because there is some concern here about just the equity of giving somebody a $45,000 increase when they ain't killing a snake.

Judge Arnold. I can appreciate that. Let me say that I have been given the precise number here. There are only 44 senior judges who aren't killing a snake out of 305.

Judge Panner. Yes.

Senator Hollings. But that 44, that is who we will be hearing about, and that is, for one thing, what forbids your raise. You are going to give 30 or 40 judges a heck of a lot of money for nothing.

The conference ought to have a way of measuring the service of judges who are taking care of the difficult combined trials, should they happen in Hawaii or wherever. You folks better come up with something. Because you actually are giving them an increase for the work, not for their retirement.

Senator Bumpers. I can just see those stories coming out about some judge lying in a nursing home comatose and getting a $45,000 pay increase.

Senator Hollings. Yes.

Senator Kasten. Or on a beach.

Senator Hollings. On a beach.

Judge Panner. That is even worse.

Senator Hollings. Yes, Senator Kasten.

Senator Kasten. I wanted to just kind of follow up on this. The problem here is that there is at least a perception that there is a significant number of judges that have taken senior status that take the minimum workload in order to, in fact, keep a staff. They want someone to answer the phones and to keep their courtroom so that they have an office and the stature. I didn't realize that they could work for a law firm until you just said it.

Judge Arnold. The senior-status judges cannot.

Senator Kasten. The senior status cannot.

Judge Panner. They have to quit.

Senator Kasten. How do you define that? When you say 80 percent of them are working, 44 individuals are not, do you define that in terms of the number of hours they spend in a courtroom? Do you define in terms of the number of cases they had last year?

Do you define that in terms of the number of days they are at work but not in a courtroom, but are doing study?

How do you define a judge at work, and how do you define the difference between the person that takes one case because he happens to enjoy this one area of the law. Perhaps he will spend 6 months on that one case because it is almost as if he is going back to law school and doing research. He is going to set a precedent in this one area, and he is going to have three or four people working with him.

They all enjoy that, and it is closer to being in law school. He kind of goes to work at 10 o'clock in the morning and is at the club at noon and he is able to play golf at about 3 p.m. That is the perception. I don't know how many of those people are out there. I know they are not that way in Wisconsin.

Judge **Panner**. No; no.

Senator **Kasten**. That is what is going on. How do you define a judge at work?

Senator **Bumpers**. I am not talking about senior judges in Arkansas. I am talking about all those boondoggles in other States. [Laughter.]

I learned the difference in that a long time ago.

SENIOR JUDGES ARE MONITORED

Senator **Kasten**. Do you understand what I am saying? How do you work your way through this, and how can you say somebody is at work?

Judge **Arnold**. There is a committee in each circuit, a committee of each circuit council that monitors the activity of the senior judges, and it has control over whether or not they get staff.

Senator **Kasten**. They all get staff, don't they?

Judge **Arnold**. No, no; if they are not doing any work, they don't get staff.

Senator **Kasten**. How do you define work?

Judge **Panner**. The way they define that, the way we have been defining it in the Ninth Circuit is over a 50-percent workload. You have to carry over a 50-percent workload to have staff, and then staff is still reduced, and that must be on certification from not only the judge but the chief judge of the district and then approval by the council.

Senator **Kasten**. What is a 50-percent workload? How do you define workload?

Judge **Panner**. That is a difficult measurement. That is why I mentioned to Senator Bumpers, because you can't say caseload. For example, you mentioned a 6-month case. I don't know any judges that are trying a case for 6 months as an exercise.

Senator **Kasten**. I am not a lawyer, and I am not a judge.

Judge **Panner**. Let me say, when a 6-month case comes along, we are pleading and begging for a senior judge, because if you take one of our judges, it destroys our calendar completely. So that 6-month case, if it is only one, is a full-time load during that 6 months. So what we have done is just try to estimate. Certification, in the Ninth Circuit, is defined as carrying a 50-percent workload and the chief judge has to so certify? You just try the best you can to determine whether or not that judge is working 50 percent of the time.

I might say in the Ninth Circuit, it has been no problem, because most of them are working 70 percent of the time or 80 percent of the time. In fact, I just had to practically order a senior chief judge back from Hawaii? The one I was talking about, Judge Belloni, has been superb, because he has been in the hospital twice since that case started. It is so rigorous, and he won't quit, and he is going to get the job done. So it is a very uncommon situation that we have with these judges here.

Senator BUMPERS. How many of these senior judges, out of, you mentioned a moment ago about 300 senior judges and 45, you said 15 are retired.

Judge ARNOLD. Seventeen.

Senator KASTEN. Seventeen are retired.

Judge ARNOLD. Seventeen is above the 305.

Senator BUMPERS. I understand. The 305, how many of them have staff, are carrying more than a 50-percent caseload?

Senator KASTEN. All but 44.

Judge ARNOLD. All but 44; that is right.

Senator BUMPERS. So the 44 are not doing anything.

Judge ARNOLD. They are not doing anything significant.

Judge PANNER. And they have no staff.

Senator KASTEN. And they are drawing their pay.

Judge PANNER. They are drawing their pay.

SENIOR JUDGES' SERVICE LENGTHY

Senator BUMPERS. That is the 44 that we are going to get. There will be a newspaper story every day about each one of those judges.

Judge PANNER. It will be interesting, Senator, to see how long those 44 have served. We will get the statistics for you. If you compared that with what salary they have drawn as judges and the service they have rendered, I don't think it would be a problem, because every judge that comes on the Federal bench expects to draw less than he or she could if they were in the outside world.

Most of us took a 50-percent cut to a 100-percent cut or more to go on the Federal bench, which we expect, and I expect that those 44 have given tremendous service. I would feel that if you analyze that situation, you wouldn't want to knock it down.

SENTENCING GUIDELINES

Senator HOLLINGS. One final question about the sentencing guidelines. You jump up $18 million. How do you quantify that? I always thought you folks were very deliberate in your sentencing. Now you are going to be more deliberate?

Judge ARNOLD. We are going to be more deliberate in accordance with——

Senator HOLLINGS. Eighteen million dollars' worth more? How do you say that?

Judge ARNOLD. We had senior probation officers go through the exercise of preparing a presentence report under the guidelines and compare that with the time that it took to prepare one before the guidelines. We found it takes 40 percent more time to prepare a presentence report now.

Senator **Hollings**. Is it bureaucracy, in your opinion?

Judge **Arnold**. No, sir.

Senator **Hollings**. Or is it good?

Judge **Arnold**. It is as good as the statute.

Senator **Hollings**. Is the statute good?

Judge **Arnold**. No, sir; not in my opinion.

Senator **Hollings**. I see. All right. Sir, go ahead.

Senator **Bumpers**. I have yet to hear a Federal judge say he loved those guidelines.

Senator **Hollings**. Yes; well, you have got to be King Solomon to pass the laws everybody wants up there. Some judges are going to be liberal, some conservative, I guess. But to try to pass a law to catch the judges is what this thing is.

Judge **Arnold**. Yes.

Senator **Hollings**. It is nonsense. Well, we did it, didn't we?

Senator **Bumpers**. We interrupted you, Your Honor.

PROBATION PEOPLE NEEDED

Judge **Arnold**. I think I had made the point. So, if you just apply those numbers to the expected criminal caseload and see how many probation officers we have now, you come up with a need for 527 more people; probation officers, probation clerks and deputy clerks in the district courts.

Now, the deputy clerks in the clerks' offices are not doing presentence reports. What they are doing is preparing a statement of reasons. The new law requires that a written statement be made of the reasons for imposing sentence. If it is outside the guidelines, you tell why. Even if it is within the guidelines you are supposed to say, in a written statment, why it falls where it does within that range. That is prepared and filed and handled by the clerk's office. That statement then has to be mailed to the Sentencing Commission, to the Bureau of Prisons, and a number of other places. That is an additional workload. So up until the Supreme Court decided the *Mistretta* case, a lot of district judges weren't applying the guidelines. They thought they were unconstitutional. Now we know that they are not. So the guidelines will be applied uniformly nationwide, which leads to the need for these people.

Senator **Hollings**. Is that it?

Senator **Bumpers**. Judge, let me ask one other question on sentencing guidelines. You talk about all this paperwork the probation officers are going to be doing. They are going to be filling in the blanks, and you are going to be bound by the blanks. Now, some of that may be hard information where they have no discretion, but is there a lot of information in the presentencing report that is discretionary which, in effect, sort of transfers the kind of sentence a guy is going to get to the probation office from the judge?

Judge **Arnold**. Well, it could work out that way. I hope that it doesn't. I hope that the facts are found by the courts and not by the probation officers. But actually, we have an appeal pending now that raises that question.

Senator **Bumpers**. You do?

Judge Arnold. We do.

Senator Bumpers. Good.

HEARINGS ON FACTS

Judge Panner. Also, Senator, we have to have fact hearings in most of these cases, and the judge has to make the facts of determination on these disputed issues. There is a whole resolution process under these guidelines that brings the defense lawyer and the Government lawyer together with the probation officer. What they can't agree on, we resolve.

Senator Bumpers. It is resolved by the court.

Senator Kasten. I just wanted to finish the question that we were on before. Of the 44 that are on senior status and are not working, that is the group that would be eligible to be a member of a law firm; is that correct?

Judge Arnold. No, sir.

Senator Kasten. Who is it that can be a retired judge and also be in a law firm?

Judge Arnold. If you have the required number of years, either 65 years of age and 15 years of service, or 70 years old and 10 years of service or anything in between that adds up to 80, like 67 and 13, that makes you eligible. At that point, you have an election. You can either retire from office, in which case for the rest of your life you get paid whatever the salary was when you retired, no increase, but you can also practice.

Senator Bumpers. You don't get a COLA, no COLA?

Judge Arnold. No, sir, no COLA.

Senator Kasten. Retire from office.

Judge Arnold. Or you can say, "I retire from active service," and if you retire from active service, that is a sort of statutory code word, and we call that senior status. Those are the people who can still work as judges. They cannot practice law. They are still judges. They work as judges, or most of them do, and they get the increases in salary, if any, when the increases occur. That is the distinction.

Senator Bumpers. Bob, there are only 15, as he said earlier, there are only 15 who are practicing law.

Senator Kasten. So the 17 are the ones who can practice the law.

Judge Panner. They do not get any increase you give.

ADDITIONAL COMMITTEE QUESTIONS

Senator Hollings. Thank you, Judge Arnold, Judge Panner, and Mr. Karam. We really appreciate your presentation here this morning. Senator Hatfield and I have some additional questions that I will submit for response in the record. Thank you.

[The following questions were not asked at the hearing, but were submitted to the judiciary branch for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

SALARIES AND EXPENSES

Question. I see where you have requested $89.5 million, or a 7.5 percent budgetary increase, in adjustments to base and other mandatory changes which are primarily limited to inflation, cost-of-living increase, etc.

If you have to absorb these mandatory increases, what impact would it have on the courts?

Answer. In order to absorb all mandatory increases, current personnel would have to be reduced by 15 percent which would leave the probation system with 68 percent of the force needed to do the work by the end of 1990. Pretrial sentencing reports are a requirement of the courts and thus, every effort would be made to complete them. This would leave other work undone and increase the impact on the supervision of 77,500 convicted offenders on probation, parole or supervised release, with only approximately 50 percent of them being supervised. Pretrial services officers, who are responsible for the supervision of 28,000 people would have to reduce that supervision, or recommend that more persons be held in custody to await trial,

The increased number of persons needing drug and alcohol abuse treatment and testing service would have to be ignored and services to existing clients would need to be reduced from 15 to 25 percent. In practical terms, persons on probation and parole, even if there was a high risk of recidivism, would be seen by probation officers once every other month. Testing for drug or alcohol abuse would be reduced to a monthly basis for the most severe cases and most of the case recording and case review systems currently in place would be eliminated. This would subject probation officers and their supervisors to the same criticism made in October 1977, when GAO reported to Congress "Probation and Parole Activities Need to be Better Managed."

Of the 77,500 convicted offenders who would otherwise be under supervision, approximately 31,000 could not be supervised. Approximately 40 to 45 percent of these offenders not being supervised would be high risk people, that is, through the use of predictive devices and analysis by probation officers, it has been determined there is a need for extra attention because of a higher risk of failure. This would include approximately 25 percent of offenders who have been ordered by the court, or Parole Commission, to participate in testing for drug or alcohol abuse and treatment for addiction.

An additional group of problems that would ensue, if it becomes necessary for the courts to absorb these mandatory increases, include the following:

Creation of a demand for additional Article III judges, if funding fails to provide for 13 new magistrate positions due to increases in the workload, because the effectiveness of current judgeships will be reduced.

The case backlog of the Federal courts would increase.

The community supervision programs of the Probation System will suffer the burden of personnel shortages because field managers must assign almost 100 percent of the staff to complete investigation duties. Without the requisite increase in positions, only 681 officers (635 short of the number required) will be available to supervise 77,500 offenders.

Forty-six percent of offenders would not have the conditions of supervision enforced; 45 percent of the offenders not being supervised are rated as "high-activity", meaning that extra attention is required for these people, because of a higher risk of failure in meeting the conditions of their supervision.

If the requested additional funds for contracting (halfway houses, treatment centers and counseling) are not authorized, pretrial services officers will be forced to reduce the use of alternatives to detention which will increase detention costs, exacerbate jail overcrowding, or result in high risk defendants being released without special conditions.

Special conditions to provide alternatives to detention provided by pretrial services, such as electronic monitoring, halfway house placements, drug treatment and monitoring, and intensive supervision will no longer be available to 60 percent of eligible defendants.

The present inventory of office automation equipment contains systems which are antiquated, incompatible and unreliable. Replacing them will improve productivity and reduce maintenance requirements.

In order to sustain the automation work done in previous years and not simply to support requests made for additional program funding, requested positions for automation are required.

In the event the requested increase for seven recalled bankruptcy judge staff years is not approved (for a total of 17 individuals), the Judiciary will not be able to meet emergencies in districts that do not have adequate judicial resources.

ANTI-DRUG ABUSE ACT OF 1988

Question. How much of your total budget request of $1.720 billion can be attributed to the trying of criminal cases, supervision of defendants and probationers, defense of criminals, and treating of drug dependent offenders?

What part of your $270 million increase is for this same purpose?

Is any of this requested increase a result of the enactment of the Anti-Drug Abuse Act of 1988?

Answer. About 40 percent of our total request can be attributed to criminal cases.

Fifty-three percent of our 1990 requested increase over the amount appropriated for 1989 is related to criminal cases.

Although we have not seen a significant increase in criminal cases, we are encountering many more drug cases which are much more complex and have many more defendants than an average criminal case. Moreover, the Justice Department has requested an additional 300 positions in 1990 as a result of the Anti-Drug Abuse Act of 1988. If these positions are approved, we may have to request a supplemental for 1990.

FACILITIES

Question. I understand you have requested a $19,650,000 increase for your facilities program during fiscal year 1990. Of this amount, $4 million is requested for facility planning for new judgeships. This is a function that has, in the past, been provided by the General Services Administration (GSA). But, before the GSA will pick up planning costs, the new judgeships must first be authorized.

If these new judgeships are created, will the GSA cover facility planning costs?

Why then, when the Judiciary has many pressing needs and we have very limited resources, do you want to assume responsibility for work under the purview of the General Services Administration?

Answer. Once these judgeships are authorized, we believe the General Services Administration will cover these costs.

The funds have been requested by the Judiciary because funding, in advance of enactment of judgeship legislation, is essential if the new judgeships are to function productively. Current estimates indicate that the cost of establishing a new judgeship is in excess of $500,000. The effective use of these resources is inhibited by the inability of the Judiciary to do facilities planning in advance of enactment of a judgeship bill. By having these funds in advance, at least 2 years can be saved in providing a newly authorized judge with permanent court facilities.

A study conducted by the National Academy of Public Administration found that a new judge can expect to be housed in temporary facilities for at least 2 years. The Academy attributed the delay in providing permanent chambers and courtrooms, at least in part, to waiting to begin work on the facilities until appointment or confirmation of a judge. A survey of judges appointed under the 1984 and 1986 judgeship acts found that two-thirds of those responding estimated that loss of productivity while awaiting permanent chambers ranged from 10 to 30 percent, and higher.

The Judiciary recognizes that the GSA has normally paid these facility related costs. However, the Office of Management and Budget has refused, on several occasions, to allow GSA to reprogram available funding for the purpose of performing facility planning in advance for the anticipated judges. The Judiciary believes that the time saved with advance planning is, in the long-run, so cost-effective that it warrants funding in the Judiciary's appropriation, since attempts to get GSA approval of the funds have thus far been unsuccessful.

COURT SECURITY

Question. You are requesting a $14 million increase or a total of $56 million in funding for court security. Given the tremendous—roughly 33 percent—increase requested for this purpose, how does the Judiciary rank court security in terms of funding priorities?

Is security coverage necessary to an equal degree in every court facility, or can most risks be adequately covered by locating security resources in those locations where trouble is more likely to occur?

Answer. Providing court security has the same high priority in the Judiciary as a judge and his/her staff. Trials cannot be held without one or the other.

All court facilities require a minimum level of security equipment and Court Security Officers, and those involved or potentially involved with terrorist or other high threat trials require higher levels of security, to include entry screening. Experience indicates, however, that virtually all court facilities have the potential for these high threat proceedings, e.g., the Scutari paramilitary/terrorism trial in Fort Smith, Arkansas; the Macheteros terrorism trial in Springfield, Massachusetts; the LeQuire Drug Cartel trial in Montgomery, Alabama; and the Carlos Lehder-Rivas Drug Cartel/terrorism trial in Jacksonville, Florida. In prior years, these locations would not have been expected to hold trials of this level of threat. Today, however, they are indicative of the potential need for heightened security at most court locations.

JUDICIARY WORKLOAD

Question. The Budget in Brief shows a serious impact on the courts, with workload growing and resources being held, for the most part, constant. In your judgment, when would the system break down if that scenario were to become a reality?

Please provide a list of those functions that you have stopped performing or deferred since you have been limited to less than your full request over the past few years.

What other kinds of functions may be terminated without affecting the citizens' right to equal justice under law?

Answer. Experience with budget cuts indicates the courts can get by with reduced staffing in the short run, but unless relief is forthcoming, courts suffer in the long run. In that sense the system is already beginning to break down. As staff levels decrease to 90 percent, more core functions, including those mandated by the Federal Rules, will not be performed. If such staffing levels were to drop below 90 percent, not only would processing be slowed and core functions curtailed, but more errors would be made, resulting in serious miscarriages of justice in both civil and criminal cases. In a recent State court case, a highly dangerous criminal defendant was released from custody due to a clerical mistake and miscommunication on the part of the court staff. Although we know of no such horror stories in the Federal courts, similar events could occur if staffing and other resources are cut back any further.

There are no other functions which may be terminated without affecting the citizen's rights to equal justice under law. Courts have already eliminated or deferred most of the important discretionary functions.

A listing of problems caused by deferrals, or cancellations of programs due to staff limitations, includes the following:

Delay in processing incoming documents and delays in processing cases.

Increased error rate in processing due to time-saving shortcuts by a limited staff, in order to process all work in offices.

Less court access for the public, due to reduced public hours of the courts.

Delay in closing cases, entailing costly and wasteful follow-up actions by litigants; trustees in bankruptcy do not receive timely compensation for the work; and further inefficiencies because larger numbers of cases will now have to be tracked.

Delay in filling requests for information and photocopying documents for attorneys and the public which are needed to comply with court scheduling orders.

Limited or no information provided on the telephone; mailed requests for information completed only as time permits; and backlogs in processing mail, which already reach several weeks in some districts and could reach months.

Possibility of compromising due process due to slow day-to-day administration because of reduced staffing levels.

Reduced supervision capabilities and shortcuts in training, resulting in increased potential for waste, error, and fraud and errors in accounting for funds, which could potentially result in the loss of funds.

Curtailing of critical core functions, including fundamental functions mandated by statute and Federal Rules, i.e., bankruptcy court notices of Sec. 341 meetings may not always be mailed according to timetables mandated by Bankruptcy Rules and discharges will not always be granted "forthwith" as required by the Rules. The primary impact will be on litigants and attorneys practicing in the courts.

DRUG TRIALS

Question. I understand that the number of drug cases is so overwhelming in Miami that significant delays are encountered in bringing such cases to trial. Can the Southern District of Florida borrow judges from other areas less affected by the drug crisis and associated increase in criminal trials?

What would be the procedure for temporarily transferring judges to other districts? Is authorizing legislation necessary?

Answer. Judges can be borrowed under existing law. Chapter 13 of Title 28, United States Code, provides for the transfer of Federal judges from one court to another when the volume or urgency of business, the disability of judges or vacancies in judgeships, result in an accumulation of court business beyond the ability of the court to handle expeditiously the work before it. Authorizing legislation is not necessary.

Procedures are established within the individual circuits to facilitate intra-circuit assignments and by the Committee on Intercircuit Assignments when judges are requested from other circuits.

The Federal courts have benefited from the visiting judges program for some time. Approximately 100 active and senior judges perform judicial duties in other circuits on designation by the Chief Justice, annually.

NATIONAL COURT LIBRARY SYSTEM

Question. I see where you have requested an increase of $1.4 million and 78 new positions for the National Court Library System to fully staff all projected circuit and "satellite" libraries by 1991.

Given the severe fiscal constraints we are facing once again this year, and the Judiciary's other pressing requirements, couldn't the full staffing of the National Court Library System be deferred another year?

Answer. A strong, efficient court library program is a "pressing requirement" for the Judiciary, because the delivery of library and information services to judicial officers as well as the support for the computer-assisted legal research services (CALR) has a great impact on the productivity of judicial personnel. No support should be deferred. This is a small program with a large potential when fully staffed and operational.

With no new personnel for three of the past four fiscal years, the program has been seriously crippled. More and more judicial personnel expect service, and 22 planned libraries await at least one professional librarian to be placed before the facility can be opened.

A 5-year library development program (1981–85) has now been stretched out to 10 years for full staffing with the result that the program has been stagnated and its effectiveness reduced. If this continues, a partial closure of the existing system will be required, thus ruining the carefully crafted and developed structure of legal information service support to the Judiciary.

Over the past 10 years, with the development of 70 court libraries, the Judiciary's library system has become the foundation for all legal research being conducted by the judges and other court personnel. One hundred eighty-six positions now support the functioning of these 70 libraries in 12 circuits, as well as the computer-assisted legal research (CALR) program in 700 chambers (soon to be 1,500+ chambers), and shared use terminals. Twenty-two additional libraries are planned. When the program started, it was to serve 1,061 judicial officers and supporting personnel. The program is now required to assist 1,520 authorized judicial officers and supporting staff. The system cannot continue to survive and serve this increase without additional staff.

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

Question. The Administrative Office of the Courts appears to be level funded at $33.6 million in your fiscal year 1990 budget request. However, upon closer examination, your request to transfer funds for court automation support to the Judiciary's "Salaries and Expenses" account will have the effect of a $4.650 million increase for the Administrative Office.

Could you please explain the transaction and its need?

How will the Administrative Office utilize this actual increase in funding?

Will additional positions accompany the increase in funding?

Answer. Funding for the court's automation activity has been split between two appropriations: (1) purchase and local operation of hardware in "Salaries and Expenses", and (2) systems development, installation, maintenance and support activities in the Administrative Office. As a result of the rapid growth of the court automation program, the Administrative Office has had to reprogram resources to court automation support which were required and justified elsewhere, such as personnel services, space and facilities, procurement, accounting, collection of statistics, and other program and administrative support activities. This transfer will allow the funding, of all activities related to the courts' automation program, in one appropriation ("Salaries and Expenses") and will enable the Administrative Office to provide support to other court activities by providing for additional, necessary personnel and the replacement of obsolete equipment.

The requested transfer of $4,650,000, from the Administrative Office to the "Salaries and Expenses" appropriation, will result in 90 positions being funded from the Salaries and Expenses appropriation for support of court ADP requirements as explained above. The number of Administrative Office positions remains unchanged. However, the positions formerly filled with ADP personnel will, with this rearrangement, now be available for assignment to other Administrative Office requirements.

Transferring the $4,650,000 to the courts' budget will consolidate in one appropriation the total program cost of court automation. This consolidation will greatly facilitate program development, service and the approval process. One committee of the Judicial Conference will decide, consistent with program needs, the allocation of personnel software and hardware resources. On the Congressional side, the Subcommittees will receive testimony on the entire operation from one Judicial Conference witness. The Subcommittees will not need to be concerned with the integration of information provided by witnesses from the Judicial Conference as well as the Administrative Office. This transfer is critical, if automation, which is so critical to coping with an increasing caseload, is to be adequately supported.

The $4,650,000 that remains in the Administrative Office's budget base as a result of the transfer will be used as follows:

The amount of $1,750,000 is requested to fund the newly available positions in the Administrative Office at a 60 percent lapse rate in fiscal year 1990. This would be the equivalent of 36 staff years.

The sum of $1,870,000 is requested to initiate a replacement program for ADP equipment for the Administrative Office.

Uncontrollable cost increases require $1,030,000. These costs include the recent Federal pay increase; additional health benefit increases; within-grade salary advancements; increased space rental costs, and other increases in travel, contract rates and charges for services, supplies and equipment.

Questions Submitted by Senator Mark O. Hatfield

FISCAL YEAR 1989 APPROPRIATION REDUCTION

Question. Last year, the Committee had to reduce your request substantially. How did you cope with the reduced amount?

Answer. Personnel has been limited to 95 percent of workload formula as of June 30, 1988. Expenditures of controllable items were reduced from $59.5 million to $27.9 million. The reductions in expenditures of controllable items are from fiscal year 1988 levels, already a reduced level. Relative to personnel, September 30, 1988 data shows that staffing has slipped to 93.5 percent of formula. Inasmuch as some items are operating in a deficiency, we expect there will be further reductions in these areas.

COURT FEES

Question. The Committee has authorized the courts to collect fees to reimburse your appropriations—$60 in civil filing fees and the ability to charge for handling funds deposited with the courts. How is this program working and are you collecting as much as you anticipated? Are there other fees that could be assessed for this purpose?

Answer. Collections for civil filing fees are totaling something over $7 million per year. Collections are as estimated and are handled without a problem.

Fees for handling registry funds, however, are not materializing as expected this year. We projected collections of $21 million this year and now estimate possibly $1 million. Our General Counsel has informed us that we may only obligate funds actually collected, rather than on an accrual basis. Moreover, collections have been temporarily deferred because of objections to application of retroactivity to the guidelines. New instructions are being prepared and collections will begin again shortly.

We are considering the application of other fees, although none have been approved as yet by the Judicial Conference.

FEDERAL SENTENCING GUIDELINES

Question. Now that the constitutionality of the Federal Sentencing Guidelines has been upheld, are you adequately staffed to handle the requirements of this new system?

Answer. As a result of the Supreme Court decision in *Mistretta* v. *the United States*, we have submitted an additional supplemental of $18,630,000 and amended our fiscal year 1990 request for an additional $18,228,000.

The supplemental will provide funding for an additional 480 positions, principally probation and pretrial services. The amendment to fiscal year 1990 will, together with the funds currently requested for fiscal year 1990, fund the 480 positions for an entire year, and add 47 more probation positions.

The 480 positions consist of 270 probation officers, 163 probation clerks and 47 deputy clerks. The additional 47 positions consist of 29 probation officers and 18 probation clerks.

FEDERAL TRADE COMMISSION

STATEMENT OF DANIEL OLIVER, CHAIRMAN

ACCOMPANIED BY:

ROBERT S. WALTON III, EXECUTIVE DIRECTOR

FREDERICK J. ZIRKEL, DIRECTOR, DIVISION OF BUDGET AND FINANCE

BUDGET REQUEST

Senator HOLLINGS. The other request we have this morning is that of the Federal Trade Commission. The 1990 request is $69,580,000, an increase of $3,337,000 over the 1989 appropriation and maintains the current staff level of 923 work-years.

To present this request, we are pleased to have the Chairman, Daniel Oliver, who is accompanied by the Directors of the Commission's three bureaus, the General Counsel, as well as the Executive Director, Mr. Walton, and the Budget Officer, Fred Zirkel.

Senator HOLLINGS. We welcome you here, and we are glad to hear your views, Mr. Chairman.

PREPARED STATEMENT

Mr. OLIVER. Thank you, Mr. Chairman. I would like to summarize briefly the prepared statement.

Senator HOLLINGS. Good. The entire statement will be included in the record. You can highlight it as you wish.

[The statement follows:]

STATEMENT OF DANIEL OLIVER

Mr. Chairman and Members of the Subcommittee: I am pleased to appear before you today to discuss the Federal Trade Commission's fiscal 1990 budget request and to answer your questions.

As you know, Congress has charged the Commission with protecting the American public from "unfair methods of competition" and "unfair or deceptive acts or practices" in the marketplace. Thus, the Federal Trade Commission has an ongoing responsibility to ensure that American consumers are able to enjoy all the advantages of a vigorously competitive market—free of unfair, fraudulent, and deceptive practices.

FISCAL 1990 BUDGET REQUEST

The FTC's proposed budget for fiscal 1990 represents the same level of work-years as appropriated for the agency in fiscal 1989. The agency's fiscal 1990 request totals $69,580,000 and 923 work-years. This funding level is 5 percent higher than the agency's fiscal 1989 appropriation of $66,243,000. This $3,337,000 increase between fiscal 1989 and 1990 is needed to fund annualized pay and retirement cost increases and other inflationary cost increases over which the agency has no control.

As in prior years, resources for fiscal 1990 will be directed against business practices that truly harm competition and injure consumers. In fiscal 1990, the Commission will continue to work directly with the business community to achieve voluntary compliance through education and articulation of policy. In addition, a case-by-case enforcement approach coupled with advisory efforts will continue to be the primary method of enforcing the law for the Commission.

The Commission's fiscal 1990 budget requests funding for the agency's two missions as follows: Maintaining Competition—$33.7 million and 442 work-years; and Consumer Protection—$35.9 million and 481 work-years.

MAINTAINING COMPETITION MISSION

The Maintaining Competition Mission budget request for fiscal 1990 reflects no change in work-years from fiscal 1989. Among other things, the $33.7 million and 442 work-years we propose be allocated to the Maintaining Competition Mission will permit the Commission to:

One, challenge anticompetitive mergers that could lead to higher prices, restricted production, diminished innovation, or other harms to consumers.

Two, investigate alleged restrictions on competition in the delivery of health care services, a major sector of the economy that has been characterized for many years by rapidly rising prices.

Three, continue our emphasis on finding and eliminating restraints among direct competitors that raise or maintain prices above competitive levels or otherwise harm consumers.

Four, assure compliance with all outstanding Commission orders while also reviewing selected orders to ensure they still promote the procompetitive environment that is central to the Commission's legal mandates.

Five, render advisory opinions, upon request and when appropriate, to increase conformance by business with the laws we enforce.

Six, respond to requests from Congress and other legislative bodies for our assessment of the competitive effects of proposed legislation.

Seven, articulate the competitive consequences of proposed law and policy changes contemplated by State and Federal agencies.

In the Maintaining Competition Mission, productivity, as measured by traditional case efforts, has increased in the past 2 years. For example, investigations increased 19 percent between fiscal 1987 and 1988. Other indicators such as complaints, consents, and injunctions also increased. Merger filings increased 8 percent. The staff has managed to process effectively this increased workload despite work-year reductions of 21 percent from fiscal 1985 to 1988. We expect productivity to increase slightly in fiscal 1989 and 1990 as workload remains constant while work-years drop from fiscal 1988 levels.

CONSUMER PROTECTION MISSION

The Consumer Protection Mission for fiscal 1990 reflects no change in work-years from fiscal 1989. The $35.9 million and 481 work-years proposed for this mission will allow us to:

One, target areas where the market is slow to react, resulting in substantial consumer injury—particularly in cases involving fraud, deceptive sales or marketing practices, false or deceptive advertising, and credit law.

Two, work closely with both State and Federal agencies to analyze the effects of their rules and regulations on consumers, and to share information necessary for effective law enforcement.

Three, work aggressively to educate consumers about their rights and businesses of their responsibilities under the consumer protection rules and orders.

Four, monitor compliance with existing rules and orders, initiating litigation where necessary to ensure compliance.

Despite a decrease in the work-years allocated to the Consumer Protection Mission from fiscal 1987 to 1988, productivity, as measured by traditional case and matter figures, actually increased. Investigations increased by 29 percent from fiscal 1987 to 1988. The total number of consents, complaints, rulemaking actions and order modifications also increased from 88 total actions during fiscal 1987 to 96 for 1988. In fact, in the areas of consents, complaints, rulemaking actions and order modifications, approximately 13 percent more was accomplished per work-year in fiscal 1988 than in fiscal 1987.

In fiscal 1988 there were almost twice as many civil actions filed in U.S. District Court as there were in fiscal 1987. Redress Orders increased by 50 percent and a total of $33.9 million was ordered to be returned to consumers—over twice the amount of redress in fiscal 1987. We expect productivity to increase slightly in fiscal 1989 and 1990 as workload remains constant while work-years drop from fiscal 1988 levels.

REGIONAL OFFICE GROWTH

In fiscal 1987 the Commission approved a plan to strengthen its regional offices. Regional offices had diminished in size, leaving several offices too small to be effective. The Commission's reallocation plan called for a phased-in employment level of 190 work-years for the regional offices. Although the Commission has not retreated from this work-year goal, agency-wide budget constraints have required that the reallocation effort be slowed somewhat. The Commission's fiscal 1990 funding request includes 173 work-years for the regional offices, the same level budgeted for fiscal 1989.

MANAGEMENT INITIATIVES

The Commission always places great importance on finding ways to improve agency productivity. A major Commission accomplishment in this area has been to make greater use of automated technology.

During the past 4 years, the Commission has been able to move forward aggressively with a number of office automation initiatives. This program has permitted a majority of agency employees to achieve the productivity improvements associated with having individual work stations tied to an enhanced central computer facility. Expenditures planned in this area for fiscal 1989 have been deferred due to shortage of funds. Our fiscal 1990 budget request reflects some restoration of these productivity-enhancing investments to offset reduced work-year levels.

FISCAL 1989 FUNDING STATUS

The Federal Trade Commission's fiscal 1989 appropriation was frozen at its fiscal 1988 funding level. This Congressional action, coupled with the need to absorb large pay and other uncontrollable cost increases, led to a unanimous Commission vote to impose a number of cost reduction measures, including a reduction-in-force.

This fiscal 1989 reduction-in-force resulted in the involuntary separation of 30 employees on January 7, 1989. Although this was a difficult decision for the Commission to make, it was done to ensure that adequate resources are available for those employees who remain to pursue aggressively all high priority law enforcement efforts.

Mr. Chairman and members of the Subcommittee, I hope that our fiscal 1990 budget submission makes it clear that the Commission is determined to carry out effectively all its statutory mandates using only a minimum level of resources. That concludes my prepared remarks. I would be happy now to respond to your questions.

CORRESPONDENCE

[Clerk's Note.—Subsequent to the hearing the subcommittee received the following letters from Commissioners Mary L. Azcuenaga and Andrew J. Strenio, Jr., with regard to the Commission's fiscal 1990 budget request. By direction of the chairman the letters have been printed in the record.]

Letter From Mary L. Azcuenaga, Federal Trade Commission

March 3, 1989.

The Honorable Ernest F. Hollings,
Chairman, Committee on Appropriations, Subcommittee on Commerce, State, the Judiciary and Related Agencies, United States Senate, Washington, D.C.

Dear Senator Hollings: On March 2, 1989, Chairman Oliver appeared before your Subcommittee to deliver testimony on behalf of the Commission concerning the agency's fiscal year 1990 appropriation. In his informal summary of the Commission-approved prepared testimony, I understand that Chairman Oliver stated that the $69,580,000 proposed for fiscal year 1990 would be adequate to permit the Commission to meet its responsibilities during that period. The Chairman apparently made this statement without indicating that a majority of the Commission had required its deletion from the prepared text and therefore that it represented his own view rather than that of the Commission.

Thank you for your consideration.

Sincerely yours,

Mary L. Azcuenaga.

LETTER FROM ANDREW J. STRENIO, JR., COMMISSIONER, FEDERAL TRADE COMMISSION

MARCH 6, 1989

The Honorable ERNEST F. HOLLINGS,
Chairman, Committee on Appropriations, Subcommittee on Commerce, State, the Judiciary and Related Agencies, United States Senate, Washington, D.C.

DEAR CHAIRMAN HOLLINGS: It was good to see you again following the hearing last week before your Subcommittee regarding the FTC's appropriation for fiscal year 1990. As always, your concern that the agency have adequate resources—and effectively deploy them—was keenly appreciated.

On that topic, I trust you have noted that the written testimony provided on behalf of the Commission does not contain any statement to the effect that the $69,580,000 suggested for fiscal year 1990 is adequate to meet the agency's responsibilities. The FTC has just completed a reduction-in-force that has squeezed work-year levels to the limit at the same time that the workload has risen to unprecedented heights.

Please let me know if I may be of further assistance to the Subcommittee. Again, my thanks for your interest.

Sincerely yours,

ANDREW STRENIO, JR.,
Commissioner.

AGENCY REQUEST

Mr. OLIVER. Thank you. The Commission's fiscal 1990 budget request is for $69,580,000 and 923 work-years. The work-year levels will remain unchanged between fiscal year 1989 and 1990, while the funding level for 1990 goes up $3.3 million or 5 percent over the agency's fiscal 1989 appropriation of $66,243,000. This 5 percent increase is needed to pay for higher salary and benefit costs and other uncontrollable administrative costs in general.

Today, the Commission divides its resources between two major missions, maintaining competition and consumer protection. I plan to summarize these budgets—but I could go into more detail if asked.

The maintaining competition mission budget request for fiscal 1990 reflects no work-year change from fiscal 1989. The request is for $53.7 million, and 442 work-years.

The consumer protection mission for fiscal year 1990 also reflects no change in work-years from fiscal 1989. That request is for $35.9 million, and 481 work-years.

The Commission's fiscal 1990 funding request for regional offices includes 173 work-years. The regional offices are at the same level as was budgeted for in fiscal year 1989, which is about 20 percent of the Commission's total resources.

As you may recall, the Federal Trade Commission's fiscal 1989 appropriation was frozen at its fiscal 1988 funding level by congressional action. This freeze, coupled with the need to absorb large pay and other uncontrollable cost increases, resulted in a unanimous Commission ruling to impose a number of cost reduction measures, including a reduction in force. The RIF resulted in the issuance of involuntary separation notices to 30 FTC employees, effective January 7, 1989.

In concluding, let me say that I think the resource level requested for fiscal year 1990 of $69,580,000 and 923 work-years would be adequate for the FTC to meet its congressional mandates. That completes my opening remarks, Mr. Chairman.

REGIONAL OFFICES

Senator HOLLINGS. Are you maintaining those regional offices at the authorized level? We worry that you may still be trying to close two of them? Am I correct that you are saying none are to be closed; and they are all staffed?

Mr. OLIVER. There is no active discussion of closing any regional offices.

Senator HOLLINGS. Good.

Mr. OLIVER. The decision was made in 1987 to increase the work-year level somewhat, but that has been put on hold for fiscal 1989 and 1990.

PREDATORY PRICING

Senator HOLLINGS. On the matter of predatory pricing complaints, how many have you received at the Commission since this last report of November 1, 1987? Do you have any idea?

Mr. OLIVER. We have the figures somewhere.

Mr. ZIRKEL. I believe there were 38 predatory pricing filings with the Commission. I don't know if that is exact. I believe we have the exact figure.

Senator HOLLINGS. What is the attitude and approach of the Commission itself toward predatory pricing? This question spawned from the information that I have that the Commission feels that that is just a fact of the marketplace and that there is no such thing as predatory pricing. I wondered whether you really received complaints.

Mr. OLIVER. I think we get 35 to 40 filings every 6 months, if I am right in my recollection. Most of them require very little investigation and a few require substantially more investigation.

Based on a letter I was just handed, we had 42 complaints between April 15, 1988, and October 15, 1988. Of the 42, approximately 33 were resolved with about an hour's work, and the rest took as much as 100 hours. So it varies, but most of them can be handled quickly.

Senator HOLLINGS. Taken care of.

Mr. OLIVER. Very quickly.

MERGER FILINGS

Senator HOLLINGS. I just noticed we had about 13,000 mergers last year. There were 3,000 filings under that antitrust act. Do you have sufficient resources to take care of the filings and the mergers you see?

Mr. OLIVER. Well, I asked the Director of the Bureau of Competition, and basically, the answer is yes. However, he feels that the staff is stretched thin, and would not want to have them work an awful lot more. They already work long and hard, and resources are tight.

Senator HOLLINGS. But you are not asking for additional resources?

Mr. OLIVER. No; not at this time, sir.

Senator HOLLINGS. Senator Kasten?

REGIONAL RESOURCES

Senator **Kasten**. Mr. Chairman, thank you. I just had a question about the regional offices, the authorizing and the appropriating. You said in your statement, that your regional offices had diminished in size, leaving several offices too small to be effective. You now have basically, although you might not have exactly as many people as you would like in every single place, you now have all of your regional offices in a status that you would describe as effective; is that correct?

Are there still some regional offices that you would identify as being too small to be effective?

Mr. **Oliver**. We do not think they are too small to be effective, but some of them are small. It is a judgment call.

Senator **Kasten**. It is a judgment call on our side, too.

Mr. **Oliver**. As to how effective they are.

Senator **Kasten**. On the money we are able to appropriate.

Mr. **Oliver**. I see the problem as basically how much to allocate to the regions versus to the headquarters. The regional offices grew at a time when there was more money at headquarters. Now, we are very stretched at headquarters. A time may come when it is necessary to make a decision as to whether resources have to be reallocated to headquarters. Because, as I have said, the staff at headquarters, on the basis of filing, is stretched.

Senator **Kasten**. How many regional offices are there?

Mr. **Oliver**. There are 10 offices, and they have roughly 14 to 19 people apiece. About 20 percent of the agency's total resources is committed to the regions for fiscal 1989 and 1990.

Senator **Kasten**. Mr. Chairman, thank you.

ADDITIONAL COMMITTEE QUESTIONS

Senator **Hollings**. We have a joint session going on right now, so I am going to submit the remainder of my questions to you for response in the record.

[The following questions were not asked at the hearing, but were submitted to the Commission for response subsequent to the hearing:]

Questions Submitted by Senator Ernest F. Hollings

REDUCTION IN FORCE (RIF'S)

Question. During this past year, the Commission has terminated approximately 30 employees.

What has been the effect, if any, of these reductions?

Do you envision that further reductions will be necessary in fiscal year 1990? If so, what will be the effect of those reductions?

Answer. In executing the reduction-in-force, agency management sought to minimize the adverse affect on program accomplishments. No individual programs were especially curtailed. The personnel reductions were distributed as widely as possible to minimize the impact on any particular program.

The Commission's fiscal 1990 budget request of $69,580,000 would support the same level of activity for fiscal 1990 (923 work-years) as does the fiscal 1989 budget.

Because expenditures for personnel compensation and space rental account for over 85 percent of the Commission's budget, an appreciable reduction in the Commission's budget will unquestionably affect the size of the Commission's work force. For example, if the Commission were frozen at its fiscal 1989 level of $66,243,000 for fiscal 1990, a reduction of $3,337,000, it would have to lose 59 work-years. If it also had to absorb a two percent pay raise, it would have to lose an additional 11 work-years.

SYMPOSIUM ON INSURANCE ISSUES

Question. I understand that the staff of the Commission recently suggested that a symposium be held regarding insurance issues.

Has the Commission made a decision regarding this matter?

Answer. There has recently been some discussion about the possibility of convening a symposium to discuss the antitrust exemption for the business of insurance contained in the McCarran-Ferguson Act. No formal proposal, however, has been submitted by the staff to the Commission for consideration. Given the constraints of Section 6(h) of the Federal Trade Commission Act, any symposium convened by the Commission would be limited to an examination of the McCarran-Ferguson Act itself, as opposed to a broader discussion of matters constituting the "business of insurance." See H.R. Rep. No. 917, 96th Cong., 2d Sess. 29 (1980).

STAFFING OF REGION OFFICES

Question. In the last Congress, the Senate included a provision in its FTC authorization bill that mandated continued staffing of the FTC's Regional Offices. This was done in part because of evidence that these offices handle a sizeable amount of FTC activity.

Under your budget request, will there be any effect on staffing the regional offices? If so, what will be that effect?

In view of the obvious importance of these offices, I presume that you would not anticipate reducing them any further, and in fact you will do everything possible to achieve the levels previously set by the FTC?

Answer. The budget request for 1990 will fund the same number of work-years in the regions as are funded in fiscal 1989, which is 173 work-years. The Commission had undertaken a program to gradually transfer resources to the regions from headquarters. However, the same budget constraints that necessitated reductions-in-force at headquarters in fiscal 1989 have also constrained the resource increases scheduled for the regional offices in fiscal 1990.

Expenditures for personnel compensation and space rental account for over 85 percent of the Commission's budget. Consequently, if the agency is funded much below $69,580,000 for fiscal 1990, or if it has to absorb the full effects of a general pay raise, the Commission will be forced into yet another round of deep work-year reductions in which it would be difficult, if not impossible, to spare the regions from any real work-year cuts.

SUBCOMMITTEE RECESS

Senator **Hollings**. We appreciate your appearance. This subcommittee's hearing for today is now concluded. We stand in recess until Tuesday, March 7, at 9:30, when we will be discussing the 1990 budget for the U.S. Trade Representative and the International Trade Commission.

Thank you very much.

[Whereupon, at 11:17 a.m., Thursday, March 2, the subcommittee was recessed, to reconvene at 9:30 a.m., March 7.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1990

TUESDAY, MARCH 7, 1989

U.S. Senate,
Subcommittee of the Committee on Appropriations,
Washington, DC.

The subcommittee met at 9:34 a.m., in room S-146, the Capitol, Hon. Ernest F. Hollings (chairman) presiding.

Present: Senators Hollings, Adams, Rudman, and Kasten.

EXECUTIVE OFFICE OF THE PRESIDENT

Office of the U.S. Trade Representative

STATEMENT OF AMBASSADOR CARLA A. HILLS, U.S. TRADE REPRESENTATIVE

ACCOMPANIED BY MICHAEL DOYLE, ASSISTANT U.S. TRADE REPRESENTATIVE FOR ADMINISTRATION

OPENING REMARKS

Senator **Hollings**. This morning, the subcommittee will continue our hearings on the 1990 budget estimates by reviewing the requests of two of the related agencies dealing with trade, the U.S. Trade Representative and the International Trade Commission.

We will have to move along this morning, as the full Committee on Appropriations is having a hearing with the Secretary of Treasury momentarily. So we will begin with the $16,830,000 requested by the USTR. This is a 10-percent increase over 1989 and provides for 6 new positions for a total of 152. To present the request we have Ambassador Carla A. Hills, who was nominated by President Bush on January 20 and confirmed by the Senate on January 31. Ambassador Hills is accompanied by Mike Doyle, the Assistant U.S. Trade Representative for Administration.

Let me just state at this moment we are delighted on a morning of this kind of weather to have anybody here. [Laughter.]

Before yielding to our distinguished former chairman here, I will say that I had all kind of differences with our good friend Clayton Yeutter, and they weren't personal. In fact, I think he is an ideal Secretary of Agriculture. He fights like the devil for agriculture. He went ape over 100 million dollars' worth of beef, but for 23.5 billion dollars' worth of textiles, he said "Free trade, free trade, and that is going to stop protectionism," you know what I mean? As we are going down the tubes in the larger one, he wouldn't do anything. Accordingly, we could have cut his budget in half, but we didn't. You have got too important a task.

My immediate reaction to the six more people with you trying to get the Uruguay Round on course, trying to take the new Trade Act, and list which countries should be under the accelerated 301 proceedings you have got a lot of work to do.

We don't want you to be worried that we will cut off your staff while you are going hither, dither and yon. So I don't think you will have any trouble with this committee on the budget, but you could have a lot of trouble with us on trade.

We welcome you here. I yield to you, Senator, Mr. Chairman.

Senator **Rudman**. Very briefly, Mr. Chairman. I just want to say that I am glad that the chairman was able to make it in during the South Carolina blizzard this morning. [Laughter.]

Senator **Hollings**. You are right.

Senator **Rudman**. Ambassador Hills, we are delighted to have you here. We think that your position, although it is one of the smaller ones in Government, is at the leading edge in terms of facing one of our major problems. It is probably the single most important trade agency, and we hope that the leadership will be forthcoming to attack the problem that needs to be attacked—I hope with vigor, and knowing your past record, I know that will be the case, so I look forward to your testimony.

STATEMENT OF SENATOR ROBERT KASTEN

Senator **Kasten**. Thank you, Mr. Chairman. I am pleased to have Ambassador Hills before us today to present the fiscal year 1990 request for the office of the U.S. Trade Representative. The USTR is truly at the forefront of confronting and correcting some of the trade inequities that bother us as policy makers and our constituent businesses as they try to enter foreign markets.

In working to formulate and coordinate U.S. trade policy among the many agencies which have responsibilities in different areas, and the Congress, the USTR has been a fine example of a small but lean agency that has performed well under difficult circumstances.

The USTR also plays the primary role in our trade negotiations, both bilateral and multilateral, with the other nations of the world. In this arena we often see nations which are our allies on other fronts lining up against us. I admired Ambassador Yeutter and am confident that Ambassador Hills will further advance the interests of this country during her watch at the USTR.

Finally, Mr. Chairman, I think it is worth noting that with the all-important Uruguay Round of the GATT upon us, the USTR is coming before us with a budget request of $16.8 million and 152 people. Given the importance of the tasks of the USTR for the future economic well-being of this country, I hope we can do all we can to meet Ambassador Hills' reasonable request. This of course recognizes its coordination function with costs associated with trade matters also reflected in other budgets. I compliment the

USTR on its lean organization and I look forward to working with Ambassador Hills as we move forward.

Ambassador HILLS. Thank you, Senator Rudman, Senator Kasten, and Mr. Chairman.

PREPARED STATEMENT OF SENATOR TED STEVENS

Senator HOLLINGS. Thank you. We have a statement from Senator Stevens that will be printed in the record.

[The statement follows:]

STATEMENT OF SENATOR TED STEVENS

Chairman Hollings, Senator Rudman, I appreciate the opportunity to review the President's budget request for the U.S. Trade Representative.

I don't have any questions about the USTR's budget, but I would like to make an inquiry about Ambassador Hill's position on the European community's resolution to require the placement of derogatory labels in fur garments imported from the United States..

The directive, which has not yet been adopted by the Council of Ministers, would require American manufacturers to sew labels into fur garments imported into the EC indicating that the animal species is commonly harvested in leghold traps.

The proposal would have a devastating impact on the economy of rural Alaska—particularly Alaska's Native community—and our Nation's $200 million fur trade. I have urged Ambassador Hills to oppose the EC's action. I have some questions I am submitting for the record on this issue.

USTR FISCAL YEAR 1990 REQUEST

Ambassador HILLS. In the interest of time, I have submitted lengthy testimony, and perhaps I could just say a few words, leaving the majority of your morning for your questions. As the chairman mentioned, our request is for $16.8 million, which is 152 overall positions, 6 more than the year previous, and a 4-percent increase in our staff and roughly an 11-percent increase in dollars. Of the $1.6 million increase over fiscal 1989, $1.4 million will go to support the Uruguay Round, primarily in the areas of travel, staff, and overhead.

As you may know, we have 15 groups that are negotiating various aspects of the Uruguay Round, a round historic in its scope and size in the GATT proceedings. The USTR coordinates and negotiates those various negotiating rounds. In fiscal 1989, we had about 105 meetings in Geneva and a number of meetings in the world's capitals.

In fiscal 1990, the year we are approaching, we expect to have more like 135 meetings in Geneva and many more visits to our world's capitals as our negotiators consult with the world's leaders.

We also know that the length of meetings will jump from some 5 to 7 days to 10, in some instances, a doubling of the days that our negotiators will be away from their home base. $258,000 of the remainder constitutes an increase in adjustment of the base to cover the cost that the State Department charges overseas.

The USTR is small, with only 152 positions, but as you mentioned, its mission is really grand, and its assignment is to lead on these various negotiations. Since you, Mr. Chairman, indicated an interest to talk more about trade policy than the numbers, and you have the numbers, maybe I could take a minute to talk about our overall trade policy.

TRADE STRATEGY

Our strategy, and it is a basic overarching strategy, is to open markets so as to expand market-driven trade all around the world. We believe that if all nations had open markets, that would permit trade to expand measureably to the benefit of all the world's peoples.

That is what we are about in the Uruguay Round. As you undoubtedly know from our discussions in Montreal, we have resolved 11 of the 15 groups in terms of a basic framework agreement. By the way, when I talk about a framework agreement, it is the most general kind of a framework within which the 96 nations can negotiate.

We have four open issues. The key one is agriculture. We have a difference of opinion with the European community in the agricultural area. We are hoping to get that resolved. Indeed, Thursday, I am going to Brussels to negotiate with Frans Andriessen and Mr. McSharry the differences that remain between us. Hopefully, we can resolve them.

Another open area is intellectual property, so important to this Nation's competitiveness. We need to establish good research and development, but it does us no good if, when we invest abroad and utilizing that research and development, it is, in effect, stolen.

What we are trying to get within the Uruguay Round is a sound system of substantive rules dealing with intellectual property—patent, trademark, and copyright protection. I think we can do that. In our negotiations over the past 2 years, we have brought a majority of the world's nations along with us. There is some difference of opinion between the United States and India and Brazil, but we are hopeful to get that difference resolved and to get a framework agreement in time for the technical negotiating committee that will be meeting April 5 and 6 in Geneva.

We also have opened the textile area, which I know is of interest to you, Mr. Chairman. The lesser developed world that is exporting textiles to us would like us to move further than we are willing to move. We want to discuss modalities, the ways of bringing the textile negotiations over time into a GATT-protected procedure with safeguards.

Safeguards is another area that is open. We are of the view that if we can get the differences in the agricultural sector resolved, that the rest of these areas will slip into place and that we will have, for our 15 negotiating groups, 15 framework agreements.

While this is ongoing, of course, we are concerned about a number of bilateral issues. Our bilateral relationship with Japan is one that has created some concern because of the size of the bilateral deficit. We are concerned about the Bilateral Free Trade Agreement with Canada and the implementation of that.

Of course, we are looking at our bilateral relationship with the European community as it approaches 1992. We would like to call that an opportunity, because that will bring together 320 million people and an aggregate gross domestic product of about $4 trillion. So clearly, the establishment of one market can be an opportunity for us, but we are also concerned less there be restrictions and access closed.

So that as you mentioned, the USTR has a full plate, and we work our people very hard. I have been enormously impressed with the talent of each and every one of them since I have arrived, and I would be delighted to answer any questions.

PREPARED STATEMENT

Senator HOLLINGS. Thank you Madam Ambassdor, and your prepared statement will be printed in full in the record.

[The statement follows:]

STATEMENT OF CARLA A. HILLS

Mr. Chairman, it is a pleasure to appear before you this morning to present the fiscal year 1990 budget request for the Office of the United States Trade Representative (USTR).

This committee has always been supportive of the work of the USTR. I hope to benefit from your interest and counsel in dealing effectively with the substantial trade challenges—and opportunities—that now face the United States.

The budget request we submitted for fiscal year 1990 is modest and sufficient to support the work we have planned for the next fiscal year. We ask for $16,830,000 and 152 positions. This represents an increase of $1,601,000 over the fiscal year 1989 appropriation level of $15,229,000, which was the same as the fiscal year 1988. The recurring portion of the request is $16,700,000. The position request is six above the current level of 146.

The Commerce Department has included in its fiscal year 1990 request to the Congress funds for payments to panelists required under Chapter 19 of the U.S.—Canada Free Trade Agreement (CFTA). Last year's legislation authorized USTR to request these funds. The Congress and Administration had agreed that these funds would be expended through the agency responsible for the CFTA secretariat. Commerce's International Trade Administration (ITA) has responsibility for administrative support to the CFTA. The Administration believes it would be simpler and more prudent to appropriate the money directly to ITA. The Administration will submit, shortly, proposed language amending the CFTA to make it consistent with Commerce's fiscal year 1990 budget submission.

Before I describe our fiscal year 1990 resource needs, I should like to briefly review the major trade issues we face. Those issues are described in the National Trade Policy Agenda, a report that was submitted to the Congress last week pursuant to the 1988 Trade Act. That report outlines the activities that will be supported by the resources that the Congress makes available to us currently and which we are requesting for fiscal year 1990.

NATIONAL TRADE POLICY AGENDA

There is no question we face huge challenges in our trade policy. The global trade deficit, while down, remains too high. The multilateral trading system is woefully in need of modernization: key areas of economic activity are covered inadequately or not at all. Too many countries maintain closed markets.

Our trade policy by itself cannot solve all these problems. Lowering foreign trade barriers will open up export opportunities, but we have to ensure that our products and services are competitive in order to capitalize on these opportunities. This will require us to manage our education, technology, defense, fiscal and monetary policies in a way that reinforces positively our trade policy.

This Administration recognizes, however, that effective implementation of the 1988 Trade Act is an essential element of our commitment to building a better America. The Trade Act seeks to strengthen international trading rules through a broad grant of trade negotiating authority; promote market access for competitive industries through the use of new procedures and new remedies; integrate trade policy with broader economic policy initiatives in order to facilitate positive adjustment by U.S. industries; and promote better policy coordination throughout the government in order to assure maximum attention to America's trade objectives in this new era of global competition.

Our trade policy agenda speaks to these objectives. But setting forth our objectives is only the first step. In order to bring them to fruition we must make creative use of the range of tools provided in the 1988 Trade Act, and we must use all of the rights and opportunities that accrue to us under international agreements to which the United States is a party. Our strategic goal is to open markets, not close them; to create an ever-expanding international trading system based on equitable and enforceable rules.

I should like to focus briefly on two key elements involved in implementing the Trade Act: effective negotiation of multilateral trade agreements; and vigorous use of Section 301 and related provisions to expand market access bilaterally.

MULTILATERAL TRADE AGREEMENTS—THE URUGUAY ROUND

The Uruguay Round is clearly a top priority on our Trade Agenda this year. The Administration's general objectives in these negotiations are: to achieve multilateral agricultural policy reform; to expand and strengthen the GATT by adding disciplines on new issues such as services, intellectual property, and trade-related investment, which are so important to our economy; to reduce foreign barriers to U.S. exports of goods and services; and, to strengthen and reinforce the credibility of the trading system by addressing the growing problems of integrating developing countries into the trading system, subsidies, and improving the rules on safeguards, or import relief from fairly traded goods.

I intend to pursue these objectives vigorously in the face of what I expect will be some tough bargaining from other countries.

Much groundwork to begin substantive negotiations has been done. Last December's ministerial meeting at Montreal resulted in agreements on how to proceed in 11 of the 15 Uruguay Round negotiating groups. Those agreements met most of our objectives for the areas addressed. In particular, we made important progress on:

Services.—The Mid-term Review results will accelerate the negotiation of a multilateral agreement on trade in services. This breaks a procedural logjam on how to begin negotiating sectoral coverage of a framework agreement. Key issues for negotiation are identified, including national treatment, transparency, nondiscrimination/MFN, and market access, including establishment. 1989 will be a pivotal year for services negotiations—work will intensify in order to approve a first draft of an agreement by the end of the year.

Institutional machinery.—The functioning of the GATT was strengthened by some procedural improvements in the dispute settlement mechanism and by agreeing to enhanced surveillance of trade policies of all contracting parties. A first step was taken toward better cooperation between the GATT and international financial institutions—by calling for a report on the subject prior to the conclusion of the negotiations.

Market access.—We agreed to a negotiating framework that enables us to negotiate market access using a request/offer method. This will afford a more integrated approach, to assure that once a tariff is reduced, a non-tariff barrier does not hinder our exports.

Our immediate task, however, is to resolve the negotiating frameworks left open at Montreal: agriculture, intellectual property, safeguards and textiles. In Montreal, it was agreed these issues should be resolved by April 5, when the Trade Negotiations Committee that supervises the negotiations will meet again in Geneva. The basic issues are as follows:

—The United States sought and seeks agreement in agriculture on a negotiating framework that will lead to fundamental reform—by dismantling trade distorting subsidies and protection.

—Because others in Montreal, particularly the EC, were not yet prepared to accept a framework that would lead us in this direction, and because we were unwilling to accept less, we agreed to give ourselves another few months to reach agreement.

—The United States, along with a number of supporters, sought a negotiating framework for comprehensive GATT agreement on trade-related intellectual property. We rejected suggestions that we settle for fuzzy, ambiguous solutions that would only serve to confuse these already complex negotiations.

—An ever increasing number of other countries share our goal of an intellectual property agreement that will include obligations on substantive standards; will include obligations on enforcement—internally and at the border; will include provisions on national treatment and transparency, appropriately revised for intellectual property; and will include dispute settlement provisions.

—The other two outstanding issues from Montreal are not easy subjects: textiles and safeguards. Our target for April is to agree on the framework for the negotiations in the remainder of the Uruguay Round. While I expect the post-April negotiations to be arduous and challenging, I believe we will be able to agree to a negotiating framework in these two areas that doesn't prejudge the issues and the negotiations in the next 18 months.

The frameworks agreed to in Montreal are "on hold" pending agreement on the four unresolved areas. While there have been no "formal" meetings of the negotiating groups in Geneva, all delegations agreed to abide by the deadlines in those Montreal frameworks. This is based on the assumption that we will resolve the differences in the four outstanding issues.

In addition, GATT Director General Dunkel has been working in Geneva with delegations to break the impasse in these four remaining areas. The process in Geneva since Montreal has moved forward in a constructive atmosphere but it is too early to assess the results. A key difficulty is the continuing difference between the United States and the EC on agriculture.

When Secretary Yeutter and I met with our counterparts from the EC 2 weeks ago, we discussed agriculture and the Uruguay Round. The meeting was useful—but we still have not been able to agree on the direction and destination of long-term multilateral reform in agriculture. We did agree that the stakes are too high and the Uruguay Round too important to let the negotiations languish. Accordingly, Secretary Yeutter and I will travel to Brussels to resume these discussions on March 10 with our EC counterparts.

In the meantime, there will continue to be preparatory working level meetings. By the end of March I will have met or talked with most of the key players in the agriculture talks. I am not prepared to sacrifice fundamental substantive interests for the sake of allowing the Round to proceed. However, I believe there is so much determination by almost all countries to succeed that we will find a solution to the outstanding issues that will enable the Round to go forward without having to relinquish our fundamental objectives.

Domestically, we are meeting with our advisors to develop and refine our positions, and review proposals from other countries. Meetings are ongoing at all levels within the Executive Branch. My staff has been consulting regularly with Congressional staff so that all of us will be ready to hit the ground running in the negotiations once April is behind us.

BILATERAL INITIATIVES

This Administration is committed to lowering barriers to the export of U.S. goods and services. Beyond our multilateral efforts in the Uruguay Round we will pursue vigorously and responsibly the elimination of barriers by our trading partners through bilateral consultations and negotiations. These efforts will include negotiation of bilateral agreements to remove formal and informal barriers to the export of U.S. goods and services in key overseas markets. I should like to highlight for the Committee three of our most important bilateral concerns for the coming year: the implementation of our recent free trade agreements, EC 1992, and U.S.-Japan trade relations.

—*Free-trade agreements.*—We will continue to implement effectively our free trade agreements with Canada and Israel, which reflect the special economic, trade and other relationships that the United States enjoys with those two countries.

Last month I accompanied President Bush to Ottawa where I had a productive discussion with Trade Minister Crosbie concerning the major issues on our bilateral agenda with Canada. Clearly, implementation of the Free Trade Agreement is our first priority with Canada. Minister Crosbie and I agreed to have the first meeting of the U.S.-Canada Trade Commission, which we head, on March 13 in Washington. While we have a number of start-up issues to resolve in implementing this new Agreement, I believe we're off to a good start.

In addition to substantially liberalizing trade between the United States and Canada, the Free-Trade Agreement with Canada creates an important new institutional framework for resolving disputes and for further negotiations on remaining bilateral trade issues. We intend to utilize these avenues opened by the FTA, in close consultation with the Congress and the private sector.

—*European Community—1992.*—Another priority issue we're pursuing on the bilateral front is the "EC 1992" initiative. The European Community's push to complete the EC internal market by 1992 offers the prospect of significant new commercial opportunities for U.S. business if it is accomplished in a non-discriminatory way.

However, in a number of areas, proposals to foster European integration could potentially prejudice legitimate American economic interests in the EC. To guard against these possible negative consequences, we will monitor closely initiatives in the Community and develop effective policy responses to those EC measures which unfairly discriminate against U.S. exporters or investors. In this exercise, the U.S. Government will have at its disposal the full range of U.S. trade policy instruments.

—*Japan.*—The enormous bilateral deficit in our trade with Japan is clearly a cause for concern. The Reagan Administration made progress in securing agreements with Japan to reduce formal trade barriers, but clearly much more is needed. Time is past for cosmetic solutions that somehow never produce results. Last month I received an important report from the Japan Task Force of our private sector Advisory Committee for Trade Policy and Negotiations. The report provides an economic analysis of our trading relationship with Japan, and makes recommendations for improving that relationship. This report, which we are reviewing very carefully, comes at a time when we are assessing our trade policy with all of our major trading partners in light of the 1988 Trade Act. I have requested the interagency Trade Policy Review Group to examine our trade policy with respect to Japan, taking into account this report, as well as consultations with our advisors regarding our other trading partners in the Pacific.

IMPLEMENTATION OF SECTION 301 AND RELATED PROVISIONS

I should now like to focus on the new market access provisions of the 1988 Trade Act. These include the development of our priorities for negotiations in the "Super 301" process, and the "Special 301" exercise for protection of intellectual property rights. We also will continue to pursue vigorously those investigations on our current 301 agenda—both self-initiated and those resulting from petitions from private parties.

"Super 301."—I view the Super 301 process as an excellent opportunity for us to determine where to concentrate our efforts over the next 2 years, and where to use section 301 in as effective a manner as possible. We are currently quantifying the benefits of eliminating various foreign trade barriers in order to select priorities; our focus will be on areas where we have the greatest export potential.

The quantification process is not an easy one, but we have marshalled the expertise of other agencies and our private sector advisors to accomplish this task. The interagency Section 301 Committee is beginning the necessary analysis of these trade barriers in order to prepare a final priorities list in May.

"Special 301."—I strongly support the high priority the Congress, the Reagan Administration, and the private sector attached to improving intellectual property protection. Self-initiated section 301 cases can be an effective means of gaining improved protection and enforcement of intellectual property rights. Section 301 cannot be our only tool, however, and we will continue to pursue on parallel tracks our bilateral efforts and multilateral negotiations in the Uruguay Round.

Telecommunications.—We will also be pursuing market opening initiatives in telecommunications, as required by the new law. I recently submitted a report to the Congress on this subject, and we will need to consult further with the Congress as the negotiations unfold. I intend to pursue these negotiations vigorously. It is my belief that proper use of the authority granted to us in this area can result in more equitable access for U.S. exporters of telecommunications products.

Regular 301 Agenda.—At present we have a dozen active 301 cases on the agenda. In some cases, we are still pursuing GATT dispute settlement; in others we are engaged in bilateral consultations; and in some we are continuing to monitor the results of a settlement agreement or of responsive action taken under section 301. In all these cases, it is my intention to use the leverage of section 301 to bring down foreign unfair practices.

COORDINATING THE VARIOUS ELEMENTS OF OUR AGENDA

In these remarks and in our Trade Policy Agenda, I have discussed under separate headings a number of issues. It is appropriate to add here a few comments on the need to coordinate our policies and actions to the maximum extent possible. For example, the tools provided in section 301 can and should provide important leverage in pursuing our Uruguay Round objectives. Our goal in the Uruguay Round is not agreements for their own sake, but rather to open foreign markets and to enhance economic benefits for the United States.

Policy coordination will not always be easy; there will be tough choices. The broad choice, in the terms used at my confirmation hearing, is when to use the crowbar and when the handshake. We cannot fall into the trap of suspending all actions against unfair trade practices on the ground that such actions "spoil the atmosphere" for the Uruguay Round. On the other hand, we won't achieve our objective of opening markets just by bludgeoning other countries with our own market-closing actions.

We have to accept that there will frequently be trade-offs in the choices we make. That means our decision-making process should include careful weighing of the options and consideration of the advice we get from Congress and the private sector. But we cannot shrink from decisions because they entail some costs.

A concrete example is the recent dispute concerning Brazil's refusal to provide patent protection for pharmaceuticals and fine chemicals. After years of trying to resolve this issue bilaterally, we concluded that we would have to take countermeasures under section 301. The question then arose what action to take. After careful consideration, we determined that action in the area of intellectual property simply would not afford effective leverage with respect to Brazil. We decided that the most effective step would involve restrictions on merchandise imports from Brazil.

Now Brazil has challenged our retaliatory actions in the GATT, contending they are inconsistent with U.S. obligations under the GATT. We have responded that Brazil's charges against us ignore the fundamental problem in the case: lack of patent protection by Brazil for the pharmaceutical and chemical sector, and the absence of effective international rules, and an international dispute settlement mechanism, to protect against such unfair trade practices. We have also indicated that we cannot nor do we intend to terminate retaliation without provision by Brazil of product patent protection for pharmaceuticals and fine chemicals. Finally, we have told Brazil and other GATT contracting parties, many of whom are sympathetic with Brazil's position, that there should be no illusion that a GATT panel can help resolve this matter simply by examining Brazil's contentions under existing GATT rules in this case. We have put the world on notice in this case that we will not rule out trade-restrictive measures that may be necessary to respond to the theft of U.S. intellectual property.

I strongly believe we have taken the right course in this case. Would we have preferred to have no GATT confrontation? Of course. Our first preference is elimination of unfair practices by agreement. Where that is not possible, I think we should try to find leverage that is effective and does not embroil us in GATT disputes. But if no other effective recourse is feasible, we have to be ready to act in defense of principle, and to stand by our actions in the face of flagrantly unfair actions, even if our own actions draw fire in the GATT.

A national trade policy agenda cannot be developed in isolation from global developments in the international trading system. Our agenda for the coming year is likely to influence—and be influenced by—macroeconomic policies, international cooperation, and the growing interdependence in international trade.

While the Administration's objectives have been determined through collaboration with the Congress and private sector, achievement of those objectives will require cooperation as well from our trading partners. Although we have a basis for such cooperation, maintaining such cooperation will require creative use of the legal tools provided us under U.S. trade law.

FISCAL YEAR 1990 REQUEST—PROGRAM INCREASE FOR THE URUGUAY ROUND (+$1,379,000; +6 POSITIONS)

I should now like to turn to the specific resource request we have made for fiscal year 1990 to support the challenging trade policy agenda laid out above.

USTR initially approached the Uruguay Round on the assumption that, in the early going, it would be most effective and efficient to minimize the build-up of Geneva staff. Given the wide range of non-tariff issues as compared with the Tokyo Round, Washington-based negotiators and experts have gone to Geneva as required to move the process along. This approach, thus far, has served U.S. trade interests well.

In Washington, we established a team structure organized around the 15 negotiating groups. Each team has been headed by a USTR policy coordinator and a chief negotiator. Some of the negotiators are from other trade agencies. The work has been carried out under the direction of USTR's chief coordinator for the Uruguay Round. 105 meetings were held in Geneva in fiscal year 1988. Additional effort has been spent visiting key capitals to inform and consult with other governments whose support we need in Geneva. This strategy has proved effective, but the pace of work at the technical level has to increase significantly to support a successful conclusion by early fiscal year 1991.

We expect a significant increase in the pace of activity in Geneva by mid—fiscal year 1989 and fiscal year 1990. Our commitment of additional staff in Geneva will be guided by the pace of the 15 individual negotiating groups as it evolves during fiscal year 1989 and fiscal year 1990. On average, groups met six times each during fiscal year 1988. We expect the average to be seven meetings in fiscal year 1989 and nine in fiscal year 1990. We expect the length of these meetings to increase from 5 to 7 days in fiscal year 1989 and 10 in fiscal year 1990. In addition, we expect a substantial increase in informal negotiating sessions (bilateral, plurilateral). We expect a further increase in the pace of our consultations in key capitals to support U.S. objectives in the Round, as well as periodic regional briefings of U.S. embassy staffs. Other cost increases will stem from required public hearings as part of the mandate to consult extensively on Uruguay Round objectives and strategy.

USTR requests an additional $1,379,000 and six positions to support the second half of Uruguay Round negotiations. $130,000 is non-recurring in fiscal year 1991. Staff costs could total $743,000 inclusive of benefits. We anticipate additional staff years in Geneva totaling as many as 16 during fiscal year 1990 and fiscal year 1991 (especially the first half). Some additional man-years will be at post. Some will be staff on extended per diem. We estimate presently that five professional man-years will work on the tariff negotiations and seven on non-tariff issues (e.g., agriculture, services, intellectual property). We expect most of the tariff professionals to be drawn from Commerce (ITA) and other trade agencies. We expect the non-tariff staff to be drawn from USTR and other trade agencies. Four of the 16 man-years would be support staff. The round is scheduled to conclude during early calendar 1991. Staff will be needed to wrap up the Geneva effort after it ends—hopefully no later than the end of fiscal year 1991.

Other object funds include $216,000 for travel and transportation; $270,000 for other services; $130,000 for equipment; and $20,000 for representation. The travel and transportation increase is due to several factors. First, it offsets partially the loss of funds from the State Department/International Organization conference account. We had hoped that State would find some way to restore the fiscal year 1986 level of funding. State has not yet been able to do so. State provided $335,000 in fiscal year 1986, $175,000 in fiscal year 1987, and about $180,000 in fiscal year 1988 for USTR delegates. Second, it reflects costs associated with the movement staff to Geneva. Third, the increase also reflects the assumption that while USTR will have additional staff at post in Geneva for 1990, we will still require additional funds for travel between Washington/Geneva and other key capitals to further U.S. Uruguay Round objectives.

The other services increase of $270,000 ($255,000 recurring; $15,000 non-recurring) is composed of $100,000 for additional trade data and analytical support to negotiators needed during the critical negotiating phases: $135,000 is for overhead costs associated with the buildup in Geneva including, principally, additional charges for support provided overseas to USTR by the State Department; $20,000 is needed to cover increased transcriber costs associated with public hearings required under the 1988 Trade Act for the Uruguay Round. $15,000 (non-recurring) will be needed to add seven workstations in Geneva.

USTR proposes three limited equipment initiatives to secure the adequate protection and communication of sensitive trade policy information during the second phase of the Uruguay Round. The amount requested totals $130,000 of which $115,000 will be non-recurring.

—$50,000 in non-recurring funds are requested to equip selected senior staff in Washington and selected offices with secure voice units (10). In Geneva, we intend to equip certain professional staff with secure voice units (3) because of the greater threat level. These units are in addition to the eight units we will have in place with fiscal year 1988/89 funds.

—$30,000 in non-recurring funds are requested for one secure portable computer and communications systems that protect classified and sensitive materials transmitted to USTR Washington; and an NSA authentication/encryption package that protects dial-in lines to the unclassified computer. This item is for USTR's unclassified system; it is to meet the requirements of the Computer Security Act of 1987.

—$35,000 in non-recurring funds are requested for one Tempest personal computer in Washington; 3 additional printers, 2 shredders and 10 switchboxes will also be needed to reflect increased activity levels by 1990. $15,000 in recurring funds will be needed for maintenance of the equipment.

ADJUSTMENTS TO BASE (+$258,000)

$258,000 is requested to cover adjustments to the fiscal year 1990 recurring base of $15,193,000 requested for fiscal year 1989. The only item covered in the requested increase is the additional FAAS costs to USTR which will result from the State Department policy change in treating FAAS costs. That amount is $274,000. This change is proposed to take effect in fiscal year 1990. USTR expects to absorb a portion of this cost and other pay and inflation related costs within its base.

CONCLUSION

This budget request will allow us to accomplish our objective, while remaining lean and efficient. It is my belief that for USTR to remain effective, it must remain modest in size. The essence of USTR's mission is to lead and coordinate other trade agencies in the development of solid trade policy and the implementation of effective trade negotiations.

We will only succeed in the Uruguay Round and in other key areas of trade policy if other trade agencies continue to support us in the future as they have in the past. I expect them to do so.

Mr. Chairman, this concludes my prepared testimony. I will be happy to answer your questions.

U.S. TRADE POLICY

Senator HOLLINGS. When you said that they are very talented, that is another problem that will come later on with all of them leaving and representing Japan. We have got so many problems that we can get into this morning.

Madam Ambassador, we have found from our experience—and it goes back to the days of the old International Tariff Commission—where I testified before them back in the fifties when Tom Dewey represented the Japanese, and he ran me around the hearing room for 2 days 30-some years ago. And we went over to the White House and Gen. Wilton B. Persons said, "Yes, you can see the Chief," that was Eisenhower. President Eisenhower said, "Yes, you will win that case," and of course, in May 1960, we lost it.

We worked all through the fifties to get to that particular point, but that started the Kennedy seven-point program, for cotton and right on down, and we continued to lose, lose, lose, specifically from the administration, which is not yours. You are trying to do it from the administration, but you have got to understand where we are coming from.

We had, in 1980, when the Reagan administration took over, a $4.5 billion deficit in the balance of textile trade, and Europe had a $4.5 billion balance in the textile trade deficit. Now, the Europeans, as you are indicating, in 1992, they are combining together and enforcing their bilaterals. We, in contrast, are giving the sing-song about free trade, don't worry.

The Europeans have come down to less than $1 billion, and we have gone from $4.5 billion up to $23.5 billion. While it was sort of steady last year, as a result of operations, it will go up again here under your watch. You watch textiles. I tell you, they will increase even more, because we don't administer. That is a problem for us.

We have got the exporters sales price offset over at the Commerce Department. I have talked to the Secretary about it. You cannot find a subsidy on nonmarket controlled economy because it is not a market, therefore, it is, in other words, from the Communist countries, I don't know whether they have changed it under the Bush administration, but they said they couldn't. So we are getting Russian textiles now.

They are dumping them right on the dock, right in front of my office in Charleston. I would hope in the negotiations, while it seems hard put, you understand that money talks. Market forces operate in your business, not diplomacy. You have got to be tactful; you have got to be polite; you have got to be diplomatic, but you have got to be firm with respect to the fact that money talks.

I don't bash the Japanese, because it hasn't cost them anything. As long as they can come and meet and listen to the American cry about, "Look, I'm defending you. I gave you the technology; why don't you be more fair. Be fair, fair trade, fair trade," So we bow and scrape and will continue. We did that for President Kennedy in 1961.

It gets you nowhere. It has got to be a market force like Roosevelt in the days of the depression in order to keep the banks open, he closed the doors; in order to save the farms, he plowed under the crops. In order to remove a barrier, we have got to raise one and then remove them both. You can't just beg for open markets. You have got to have an economically market force opening of that market.

We put the laws on the books, and we hope to all move, like world peace, we all hope to move to free trade, but the governments that have risen under the Marshal Plan have very profitably developed a government support entity, financing, control, subsidizing an otherwise regulated international trade for market control.

We, in turn, still use our Government, Senator Rudman and I, for standard of living. Over here before we can open up, we have to have clean air, clean water, minimum wage. That invades the free market. Social Security, unemployment compensation, safe machinery, safe working place, plant closing, and we just keep on. We have got double-breasted; we have got seven more, and President Bush says to get on up with the minimum wage. Our Government says, "I don't care what your capacity is, you are worth so-and-so by law."

That is it. There ain't no free market. We are all for that. It is not a partisan thing. We are proud of that in America. Less than one-third of the homes have toilets in Japan. They are not worried about the standard of living. They are worried about market share, and it has worked. They are richer than we are.

So that is the kind of international arena which we are operating in. We are asking you through diplomacy, Ambassador, to negotiate free trade. You have got to have some real tools. I know you are astute, and I mean it in a praiseworthy sense, you are tough. I like that. I hope you can bring some sense to that crowd so we can sort of level it off.

But you are not going to be able to do it unless we use all your tools or ask us for additional tools. The only reason you are even there is because the executive branch over the years has kept babbling, free trade, free trade, free market, and the banks and all take over. So the Congress established the trade representative?

Back there, they told me let the emerging Third World take that low-skilled textiles, and we will make the planes and computers.

Now they are making the planes and computers 30 years later. When you talk about the Third World or lesser developed, they are not lesser developed, uh-uh. That is Japanese down in Indonesia. The Japanese have all of that.

They have gone into the more technical and computers and high definition TV. They hold that at home, but with their money, they have opened up all those Indonesian plants, and they control them.

They ship right on through, and they are using the Indonesians. We are acting like we developed them and everything else. The Japanese developed them. India, the same way. That is Japanese money. Hong Kong borrowed 1 billion dollars' worth of Japanese rigs to make all these dresses and blouses and shirts; zero from the United States. They know how to use it.

How can I sell a shirt in downtown Seoul or Pusan? I can't until I get a license from the Korean textile industry. They won't give me one. You can go over there and say, "Be fair," and license a few, like this sing-song that we keep hearing about oranges and tobacco, like that is a wonderful thing.

We got a few oranges sold or some cigarettes sold. I mean, that is not trade. We are a world power, and the only way to maintain as a world power is to have a capability: glass, steel, rubber, aluminum, and rolling stock. You can't deliver your wheat on optic fiber. And forget all this about service economy. That doesn't help us at all.

We have got to maintain our industrial capacity, and you are the last clear chance, as we call it in the law, for us to get these things done. So if you need five times the staff, you can come here to Senator Rudman and myself. We can get the money if you can show us that you are using it really to bring the pressure on to open up the markets. There is no polite way to do it. If I am Japanese, I am not going to give any unless you make it cost me economically.

Let the market force operate in this trade thing at the top level, not diplomacy and all of that stuff. There use to be a day when Lyndon Johnson could go down to New Zealand. He said, "I will take your beef if you will put some troops in Vietnam," and so we got some troops in Vietnam. That is how we got them there, we took their beef.

Now this crowd has been hollering, "Oh, there is no connection. We are not going to have any connection whatsoever of our foreign policy with trade." That is just unrealistic in the world we are living in. Unless we can get back our economic security, we can forget about political and military security. It is gone. You are the last clear chance we have got.

I will yield to Senator Rudman.

Senator **Rudman**. Was there a question there, Mr. Chairman? [Laughter.]

Senator **Hollings**. I am going to submit some questions for the record. I don't get to see the Ambassador often enough. We also have got to get to the ITC this morning. I wanted to put on the record just exactly where we are.

The only reason you are there as the U.S. trade representative is that the executive branch will never respond. You are a creation of the Finance Committee of the Congress of the United States. That is what you are created by, because we couldn't get anybody to listen. Now, if somebody tries to take you over, remember you are with us. [Laughter.]

Now, Senator.

Senator RUDMAN. Thank you, Mr. Chairman. Madam Ambassador, as you will learn and are now learning, this is a unique subcommittee. We really work very well together here, and we manage to work things out with all those agencies that depend on us for appropriations.

The chairman, you know, has touched on a point which we are all very sensitive about. There isn't a question about the feeling that most of us would subscribe in theory to the free trade policies of the last administration. It is their implementation, the patent unfairness on the other side, that really bewilders many of us.

The bottom line, of course, is that we have got the greatest weapon of all, because we are the greatest market in the world for all of these countries, and if we will adjust, start to indicate that we were going to start to use some of that market in a way deleterious to their interests, I think you would find people negotiating with you in much better faith than they have.

TELECOMMUNICATIONS

Let me ask you just a couple of specific questions. Last month you named South Korea and the European community as priority countries in the telecommunications area, one that we have been very concerned about, because, after all, it is an area in which this country does excell, one in which we would hope that our trade balances could be improved by large sales of that equipment.

What specifically now are the barriers that exist in South Korea and in the European community to American telecommunications exports?

Ambassador HILLS. There are a number of barriers, and we have been negotiating with both groups. In Korea, I rather thought that had we had a little more time, we might have created a market opening, which is basically our approach, is that they will let our equipment and our services in without having any market ban whatsoever.

We are hopeful. You both have mentioned that we need to utilize force and, of course, this is a 301 proceeding which starts with a negotiation and ends with a determination of whether unfair practices are being used. If so, we take retaliatory action which is harmful with respect to their economy.

There are statutory requirements for instituting a 301 or a super 301 proceeding, and we are trying to follow the statute very closely.

Senator RUDMAN. Well, you have a year under the act, and then you have a 2-year extension possibility. I guess my question is: At the end of a year, if you don't think that progress is being made under the legislation recently passed by the Congress, are you then willing to recommend that we go ahead and impose those trade sanctions contained within that legislation?

Ambassador HILLS. If progress isn't achieved, we will have to do so. Of course, we are not hoping that progress is not achieved. It is not our goal to come to you and say, "Hooray, we have utilized 301 to raise barriers in our own markets."

Our goal is to open markets, and we honestly believe that by opening markets, we get an expansion of trade, which is to the benefit of all the world's people. This is not just economic learning from the Chicago school. This is worldwide economic learning. So if we can grow trade and have open access to all markets, we think we will all be better off. That is what we are trying to negotiate with our trading partners.

Senator **Rudman**. When it comes to the South Koreans in particular, and I guess to the Europeans as well, you must follow statutory schemes; we understand that. But I have had the feeling, having done negotiations in my life, that if you suddenly laid it down to them that they were going to lose *x* share of their exports in consumer electronics or automobiles or whatever and that was it, then you immediately turn the political pressure inward on that country.

One of the problems that we have never dealt with very successfully is that we have not recognized that small political entities within some of these countries have enormous power. One of the greatest examples is Japanese tobacco farmers, who represent a very tiny element of the Japanese economy. Yet in many ways within the Parliament there, they exert as much power as the automotive workers or the electronics workers.

It has been suggested that if we simply throw the entire problem back into their political process, they will reach a satisfactory economic solution very quickly in terms of what they would be willing to take from us. Don't you think that is a reasonable attitude for us to adopt?

Ambassador **Hills**. Well, that is the bottom line if we are not successful in our negotiations. But we are trying to be successful.

Senator **Rudman**. Well, you are trying to be successful, and obviously, by your standards, you would have a failure if you had to impose those sanctions; the negotiations would have been unsuccessful. That would not necessarily mean that you have failed. It might mean that your opposite numbers were totally uncooperative; am I correct?

Ambassador **Hills**. That is true, and when that occurs, we have utilized 301. Indeed, it was the threat of 301 that caused the opening of the beef market in Japan.

But in other instances, we have had a retaliation, a counter retaliation, which some call a trade war. At least it is a net-net loss of market. Our goal is to think strategically about how to pry markets open. That is our success, but we certainly will utilize the 301 retaliatory tools at our disposal, if we can't pry open the markets.

We do try to persuade and negotiate, and failing that, we do raise barriers.

Senator **Rudman**. Well, I just hope that that is exactly what will happen, that you will be successful in your negotiations. Of course, if you are not, then Congress has an opportunity to do that.

FSX

Turning to a related but slightly different subject, it has been my feeling from listening to the experts in the field that in an ideal world, each country should be able to export those items that it does best. In a truly balanced world economy, those countries that do particular things well, export those items and do well with those exports and import those items which, for geographic reasons or other reasons of industrial composition, they are unable to manufacture as well as others.

I think that is a reasonable position. I am very troubled by the FSX situation and I am just wondering what your view is on that at this time.

Ambassador HILLS. The FSX matter is in an interagency review at the present time. USTR is one of several agencies involved in the review. The lead agency is the Department of Defense. We have not completed their review, but we should shortly, and we are examining all aspects of that transaction. I know it has been worrisome to some, and some of the parties at the table who are in the working group have also expressed concerns.

I am certainly hopeful that at the end of the process that we will have a transaction structured in such a way as to protect U.S. technology and its basic trade interests.

Senator RUDMAN. I don't know how you do that, Ambassador Hills. You know, I read a very interesting piece in the Sunday newspaper, I think it was the Times or the Post. Spokesmen from various departments—not your department, but others—talked about the fact that we are going to be able to find a way to structure this to guard American technology.

I have talked to enough aeronautical engineers to know that that just isn't possible. We are just going to give away the family farm. That bothers me; and now you tell me whether or not this is an unreasonable attitude. I would really like to hear your response.

The Japanese sell unlimited consumer electronics in this country because they do it well. They have taken over the entire VCR market because they do it well. They have a substantial market share of automobiles because American consumers like them and they do them well. They are now in farm machinery; they are in textile machinery; they are competing with computers and, in fact, across the board, the Japanese do many things well. Therefore, we buy their products and, essentially, haven't tried to compete.

When it comes to the manufacture of aircraft, particularly aircraft with systems integrated, such as noncommercial fighter aircraft, using the most forward-looking computer technology, the United States is No. 1. Nobody can even come close, not British Aerospace, not any of the Italian companies. The American aerospace industry in terms of systems integration with airframe is absolutely extraordinary.

Is it unreasonable to say to the Japanese, "Here is something we do very, very well. Don't build your own fighter aircraft. Buy them from us, because we buy everything that you do well from you."

Is that an unreasonable attitude for this country to take? Because it is currently my attitude and one I will carry to the floor.

Ambassador HILLS. There are many factors that went into negotiating this agreement, and many have taken the position that you have taken. Interestingly enough, the aerospace industry has not been outspoken in its criticism of this arrangement.

Indeed, several of them have spoken in favor of it.

Senator **Rudman**. I think they may have been coerced by DOD in some instances. In fact, many of these companies are almost afraid to speak up because of the amount of business they do with DOD at this time.

Ambassador **Hills**. We have found in other areas that they haven't been shy about speaking up about their economic interests. I am not here to debate with you as the interagency process is ongoing. I know that there have been serious concerns expressed.

I can represent to you that aerospace manufacturers have not been outspoken in their criticism. I could certainly restate the arguments that the proponents of the arrangement have made in the public domain, but you are very much aware of them. All I can say is that I am hopeful that the interagency process comes out with a recommendation to the President on the transaction that is in our Nation's best interests.

Senator **Rudman**. Well, I think my time is about up here, because we have a limited timeframe. I would simply respond by saying that it just seems to many of us that here is a classic situation where the United States has dealt fairly with the Japanese and have essentially had very open markets and have said, "We acknowledge you do these things extraordinarily well, and therefore, you will have the major market share in our country," and yet, when it comes to something that we do very well, the attitude of the Japanese is, "Well, that is nice. You do that very well, so you teach us how to do it, and we will give you a few billion dollars, because, you know, if you don't, we threaten; we will do it all by ourselves, and we will do it with the French and British" or whoever, which is an idle threat.

Then, of course, 6, 8, 10 years from now, as we look back at the decision, we find that it is no longer Boeing 757's that are being sold to foreign airlines but Mitsubishi 867's. Because essentially, we give not just a few billion dollars" worth of technology, but enormous amounts of technology going back to World War II when we build this capacity and help the Japanese.

So I want to tell you, Madam Ambassador, that when you are in that little working group of yours, you tell them that they are going to have a lot of hard selling to do, because I personally am putting together a group of people to carry on a major fight to defeat the administration on this issue if they make that recommendation.

Thank you.

JAPAN

Senator **Hollings**. Madam Ambassador, let me bring into focus my question on the expression, "Do it well." It is not the industry; it is you and me, the Government. I don't bash the Japanese. I am bashing you and me. Do it well. Go back to Japan, for example, on automobiles. Chevrolet and Ford were selling cars in downtown Tokyo long before World War II. After the war, they only licensed Nissan and Toyota, using American technology, totally protected.

When we have had antitrust; they have had pro-trust in the domestic market. Yes; with that financial backing and total protection and total pro-trust, that Toyota that sells for $16,000 in Tokyo sells for $12,000 here. They still have used that market share and when those Toyotas come in, 1,000 of them in Portland, OR, we inspect 10, which is a fleet inspection; we put them onto a flatbed; bring them right on over and sell them in Charleston, SC, an afternoon or two later.

Now, what happens is that if you put a Ford automobile on the dock in Tokyo, it is 4 months, and if you think that is long, getting back to the European economic community by 1992, you cannot buy a 1989 Toyota until January 1, 1990, in France, not 4 months, but over 1 year.

It is government-to-government competition. "Do it well" is not by the company. We have got some kind of mentality out there that we have got a bunch of fat, rich, lethargic employees. I know differently. They come, I have got over 20 some Japanese-operated and controlled plants in South Carolina, and they are not sending them back to Tokyo to sing company songs. They tell me they are more productive than in downtown Tokyo.

I know I have got the good worker. I am looking around to find out why we have problems and it is me and you, the Government here. That is why my question was, in your experience, if there are any gaps in the line where they have got a tremendous advantage and we have got to do better, like our 301, like our exporter sales price offset. I can go right on down the list. Then tell me at the governmental level what is necessary.

That is what I am trying to learn from you as Ambassador, because we haven't given you the tools. It is not the industry out there; it is our Government in here that is the, I don't want to say enemy, but the hurdle to really get over. We are not doing our best.

I yield to Senator Adams. I am sorry.

Senator **Adams**. Thank you, Mr. Chairman.

INTELLECTUAL PROPERTY/301

Madam Ambassador, it is nice to see you again.

Ambassador **Hills**. Thank you very much, Senator.

Senator **Adams**. I have two areas I would like to cover, and I would pick something up on the background of Senator Rudman and Senator Hollings. We are facing a series of mercantile countries with trade policy, Japan being a mercantile country; Korea is, and the others will develop in that way. I want to cover two areas because they involve my home area, but I will be talking to you about them throughout this year, and they involve precise examples of what the chairman was talking about.

You mentioned in your statement the super 301 process and intellectual property. We happen to have Microsoft in Washington State, Microsoft. A lot of people may not know it, but the one who invented Microsoft was a page for me in this Congress in the middle of the sixties. He is a genius, and the people he has around him are geniuses. I don't know how they do it. For example, they invented a software program to learn how to play monopoly faster. They went to Brazil, and they had their Microsoft programs, and what has happened is, the Brazilians copy these programs. They copy them, and then they use them, and so we lose completely any value to the software that is exported. There is a problem of hardware, also. But are you going to use the super 301 process to help prevent this software piracy?

I can give you other countries where this is happening, but Brazil and Taiwan are examples. Can we protect our intellectual property over there? Because it seems to me that this is one of the areas where we excel, like with Boeing, which also happens to be in my State. We do things well out there. The chairman is right: we want free trade, but we don't want to send everything over there and just have it copied and fired back at us.

What is your position on using the super 301 process? I mention Brazil for protection of intellectual property, but there is Taiwan, and there will be a series of other countries.

Ambassador **Hills**. Brazil is a very good example. We have a 301 proceeding against Brazil right now, and it is a difficult area.

Senator **Adams**. We are not protected yet.

Ambassador **Hills**. No; we are not protected. They are resisting us to the hilt.

Senator **Adams**. Absolutely. Now, where are we?

Ambassador **Hills**. Well, we raised our trade tariffs because of their failure to protect our intellectual property, and we have a debate with them. In other words, we are in a trade war with them. It is very difficult. It energizes our efforts with respect to the Uruguay Round, because one of the most important areas of the round is to develop rules to protect intellectual property. What we are insisting upon is clear rules, a mechanism of enforcement within the jurisdiction, GATT principles, such as transparency and national treatment, and a dispute settlement that is cohesive and reasonable.

Senator **Adams**. And we will hold out until we get that.

Ambassador **Hills**. This is what we are negotiating in the Uruguay Round.

Senator **Adams**. By hold out, I mean, you will heat up our special 301 procedure?

Ambassador **Hills**. Yes; we have. One of the problems is that the GATT process covers goods, but it doesn't cover intellectual property. We are trying to expand GATT to cover intellectual property and services.

Senator **Adams**. I understand.

Ambassador **Hills**. By raising a bound tariff against Brazil, we have violated our commitment to GATT. So there is a bit of a tension there. But we had to make a decision, and it was a tough choice. We do want to expand and strengthen GATT so that the community of nations comes into that forum to resolve their trade disputes, and we want to broaden GATT so it covers intellectual property.

MARITIME MATTERS

Senator **Adams**. That is what I wanted to know on that issue.

The second thing is this, and I won't even tell you which side I am on in this.

Are you going to put maritime on the table in the Uruguay Round? We took it off in the United States-Canada talks, and those of us that have lived in the transportation business a long time are very worried about cabotage, and we know that maritime will go on the table.

I just wonder what you have got in mind, what you want to do with maritime in the GATT negotiations. I kind of think I would like it off the table, but I am not sure.

Ambassador **Hills**. We have a sector dealing with all sorts of services in the Uruguay Round, and one area that does present some difficulties for the United States is cabotage. We have a framework agreement, but we haven't gotten that far in negotiations.

Senator **Adams**. But you have left maritime in the GATT round at this point? You haven't taken a position. In the Canadian agreement, we took it off the table because it was just too hard to untangle and we didn't like the potential of what was going to happen to us, and we have got so little left as it is.

You have not made a decision, yet, then, as to whether to put maritime on or off the table in GATT in Uruguay?

Ambassador **Hills**. We are only dealing with a framework agreement. It is on the table in the sense that it is part of the negotiation. Whether it ends up in the agreement is yet to be decided. A negotiation is a negotiation.

Senator **Adams**. A negotiation is a negotiation.

Ambassador **Hills**. A negotiation is——

Senator **Adams**. I understand. You are negotiating for the term negotiation.

Ambassador **Hills**. Yes.

Senator **Adams**. Thank you, Mr. Chairman.

Senator **Hollings**. Thank you.

Senator Kasten.

1988 TRADE ACT

Senator **Kasten**. I would like to also just make a comment. First of all, welcome.

Ambassador **Hills**. Thank you.

Senator **Kasten**. I also strongly agree with what the chairman said in terms of our Government working hard against or with the other governments, that this isn't just a matter of us being able to compete or not being able to compete.

I also believe that if you go back and look at the debate that took place around the trade bill, maybe even a year or two before the trade bill and then on final passage, you will see this kind of tension between the Congress wanting to put in automatic reciprocity and the administration rejecting that.

We have ended up, in a sense, with a compromise. In my view, that is a very delicate compromise. In my view, the administration position probably doesn't have the votes in this Congress. In my view, if the administration is looked upon by the Congress as being reluctant or resistant to apply the super 301, the reciprocity requirements, whatever, if they are being viewed as not being aggressive, in other words, dealing with just the pure letter of the law, but never aggressively pursuing the spirit in the way that we want it pursued, then the response will be, very quickly, maybe as an

Appropriations Committee amendment, that the Congress will force reciprocity, which the previous administration resisted. My guess is, from my reading about what you have said and done, that you would resist.

I think it is extraordinarily important that at the onset, that the administration, even though you might not like every single part of that last trade bill, recognize that that is, in a sense, the limit; that is the best you can do. If we don't aggressively pursue, with not only the letter but the spirit of the law as we wrote it, there will be a new law. That would be worse from the point of view of many of the people that are trying to work their way through this complex trade negotiation.

I am from a State that is getting beaten up back and forth by imports. We now, with the dollar coming down, are doing better and better. There is just a strong, strong feeling, and we have politicians demagoguing this issue every single day, of a strong, strong feeling that we are just not being tough enough, and those of us who kind of worked for and then voted for that compromise and backed away from some of the tough reciprocity stuff that we probably could have passed, certainly, it would have passed in the House of Representatives, it is just important, I think, to recognize that you have got to aggressively work with the spirit, not just the letter of that very sensitive part of the law.

BEEF HORMONES

That is just a statement. I would like to just ask, what is the latest on the beef hormone controversy? Do you have any indication? I have seen a couple of articles that there might be some progress there. Could you bring the committee up to date on the European community's controversy on beef hormone and where we seem to be going?

Ambassador **Hills**. I met with Mr. McSharry, who holds the agricultural portfolio for the European community, on the 17th and 18th of February here in Washington. We regard their ban as a barrier to trade because it is without medical or scientific evidence—and we have retaliated. We have raised a tariff barrier in an amount equal to their ban, namely, $100 million.

What we agreed to do at the February 18 meeting was to appoint a task force to look over the succeeding 75 days, at means of resolving our dispute and during that period of time, to the extent that we could ship beef that they accept that is consistent with their law and with our methods of production, we would reduce our retaliation. That is where it stands.

The task force met yesterday for the first time. Representatives from the European community came here. There will be another meeting where our representatives will go there, and I am hopeful that we can come to some sort of a resolution. It is a very difficult, complex issue.

Senator **Kasten**. Does the fact that these meetings are taking place mean that people are basically stalling, or does the fact that the meetings are taking place mean that you feel there is hope for real progress and we are about to see both of the barriers, the barrier on their side in terms of the beef hormones and the barrier on our side that we put up, are you looking down there?

Are we just basically talking past each other, or are we about to make some real progress, or don't you know?

Ambassador HILLS. No; I think I do know. It is difficult. The European community has passed the law, and it has been adopted by the 12 member states. They feel committed to that law. The question is: Can we resolve a way that complies with their law and also complies with our means of production?

I would be delighted to come in and give you a full briefing on that issue if that is a concern to you, because it is a complicated issue and one that you might be interested in having full disclosure on.

Senator KASTEN. The next step is looking at overall agriculture, which is what has been——

Ambassador HILLS. Yes.

Senator KASTEN. Basically, the beef hormone problem was difficult, but it is just an example of a whole group of these difficult areas when we get into agriculture. In a sense, the last round of discussions fell through because there wasn't an agreement on agriculture. We are about, now, to go into the next, the Uruguay Round scheduled for April. Are you prepared once more to basically say, "If we don't have an agreement on agriculture, we don't have an agreement on anything?"

That is the previous position. That continues to be your position?

Ambassador HILLS. Yes; that is right. I think many of the countries of the world agree with that.

Senator KASTEN. The British do.

Ambassador HILLS. Agriculture really is a key, and I would add that these bans that are used for reasons that cannot be supported by medical or scientific evidence would be resolved if our proposal with respect to agriculture were adopted in the Uruguay Round. We have a harmonization effect and a panel within the agriculture so that we could deal with other problems. I know that when you allude to, "This is just a beginning," that is just how we regard it.

That is why, when I get letters saying, "You are overreacting to the ban,"we disagree. We have to look at the precedential effect, because today it is beef; tomorrow it is a field of wheat that has been sprayed with nitrate; the day after it is something else. So we don't want to bring down tariffs only to find health bans, safety bans, environmental bans taking their place.

Senator KASTEN. I strongly agree with you, and the nontariff barriers are, in many cases, worse than the tariff barriers. I think we relatively, we, the United States of America, have been better on tariff barriers than we have been been at knocking out nontariff barriers.

URUGUAY ROUND MID-TERM REVIEW

Your answer to my question is yes, we are prepared to walk away if we don't have an agreement on agriculture, and we are not starting to nickel and dime and go for small parts. We want an overall agreement that includes agriculture.

Ambassador HILLS. Indeed, it is more than that. We want framework agreements in each of the four open areas. We have the other 11 framework agreements on hold. I would say that this is the first round where we have had a mid-year review.

I won't debate whether we should have had a mid-year review. Normally in a round, you start at the beginning and you come out after your negotiations at the end.

Here, we decided to have a mid-year review, and so we have sort of a progress report to determine where we are. That is where we are in April. It is an odd time of year, because we had hoped to get all of the open issues that we are addressing at the technical negotiating committee's level in April resolved back in December. Four of them did not get resolved, and hence, we have the meeting in April.

Senator KASTEN. Take the next step with me. Assuming that it doesn't work out and that we are not able to get an agreement on agriculture and therefore, we walk away, and we are probably joined by the Brits and maybe a couple of other countries. At that point, will you go back to try to put together some kind of an umbrella GATT-like group or will you, instead, decide that this isn't working very well, "I want to aggressively pursue bilateral trade agreements" and start to do more of what we are doing with the free trade agreement with Canada, with Israel, maybe explore a free trade agreement with Taiwan, explore free trade agreements instead and start a bilateral effort as opposed to this overall umbrella effort under GATT or other kinds of groups?

Ambassador HILLS. First of all, I think that we can get resolution in the Uruguay Round, and I cannot overemphasize to you how much more helpful it would be to get 96 nations to agree that there shall be rational rules to deal with the bans about which you speak and that there should be rational rules to deal with intellectual property, on which this Nation thrives.

It does no good to provide incentives to have research and development in any area, whether it be in military aircraft or the aerospace industry if it is not protected when it goes abroad. So the Uruguay Round is indispensable in my view.

As far as walking away, as I explained, we are at the mid-year review. I hope to keep people negotiating until we do get a resolution in these 15 areas and then proceed to put flesh on the outlines of these 15 framework agreements.

I am not willing to, I really am not prepared to speculate as to what we would do if we don't get agreement. We really must get agreement. But I would call your attention to the fact that although we were working on the Uruguay Round, we have continued bilateral negotiations. We did have a successful bilateral negotiation with Canada. We do have a bilateral arrangement with Israel. We have bilateral negotiations with the European community as they approach 1992, as we do with a number of our trading partners.

But it is extremely important not only to achieve a bilateral resolution to disputes. We can get a bilateral resolution perhaps with one nation with respect to protecting our intellectual property, but we are a multilateral trading leader. We cannot protect our industrial base as well with bilateral agreements when our companies are trading around the world.

Senator **Kasten**. I agree with that. What we want to do is to increase, though, the kind of trade. I support the United States-Canada Free Trade Agreement. Let me just do 30 seconds more.

Senator **Hollings**. You have got plenty of time. I am loving this. [Laughter.]

CFTA—BEER

Senator **Kasten**. I want to ask a Wisconsin question. But I wanted it in the reference of the United States-Canada Free Trade Agreement. I support it. It is going to help our country. It is going to help Wisconsin. It is going to help Canada.

Ambassador **Hills**. Yes.

Senator **Kasten**. My sense is that even though it might not be perfect, that these bilateral negotiations are, in fact, helping us in ways that can be helping us. But one way it didn't help us was in Wisconsin beer. [Laughter.]

I just want to talk about this one specific issue. My question is: What is the status? Is there a monitoring? We have got the agreement, and we have got it signed. We signed it here; they signed it there. OK, now we have got an agreement. What kind of changes can and would be made in this agreement or do we have to start from scratch?

In other words, as you may or may not know, we have got an interesting kind of a problem. Not only do we make beer in Wisconsin, but most of the growth in beer is coming from the north and coming from the south. From the north, they have got Molsons and O'Keefe, and they are coming in like crazy from Canada; and from the south, the only difference is you put a lime in the top of it and you drink Corona, Carta Blanca, Dos Equis, whatever. It comes in from the north; it comes in from the south.

Those are the two biggest growth areas in beer, and we can't sell our beer either north or south. We tried in the United States-Canada Free Trade Agreement to work out a way that we could start to sell beer that was manufactured in the United States of America, that was brewed in the United States of America in Canada and it was rejected, and it was rejected in part because of politics having to deal with the provinces as well as the problems that they had in Canada just agreeing to start to sell Bud or Miller. We don't want them to sell too much St. Louis beer, but Miller or whatever. [Laughter.]

If we are going to try to start to deal with that problem, what is the mechanism that we would pursue, a problem that wasn't resolved in the United States-Canada Free Trade Agreement but that still is out there as a problem and that we maybe would like to explore? Is there a mechanism in the agreement?

Ambassador **Hills**. Yes; I went to Canada on February 10. Indeed, I went when the President went and met with John Crosbie, who is their trade minister, and we had a number of discussions about open issues. The first meeting of the commission, which is Canada and the United States, John Crosbie will come down here, indeed, it is Monday, March 13, to set up the mechanism for dealing with open issues.

We do have a number of issues on the table, and I suspect over time, we will have, just as trading partners have disputes, disputes. In this bilateral arrangement between the two countries, there is a dispute mechanism, and I am hopeful that our bilateral arrangement will work well.

Bilateral trade agreements tend to work best where you have a large amount of trade, common culture, and a common understanding. We have all of those things with Canada, so that it looks good, and I will keep in the back of my mind your particular interest in Wisconsin beer.

Senator KASTEN. We will look and make sure this stays on the table. I am pleased with that response and that there is a mechanism to resolve things that are not resolved.

Mr. Chairman, thank you.

Senator HOLLINGS. You are terrific, I am telling you. Along that line, keep in the front of your mind textiles. [Laughter.]

ROLE OF U.S. GOVERNMENT IN TRADE

Because I voted for the Canadian Free Trade Agreement, and as you know, the differences we have is allowing these piece workers to come in and everything else. We are in a disadvantaged position from a free trade environment, and we have got to iron that out. Even though my textile people wanted me to oppose it, I supported it because of the exact reason Senator Kasten has given, it is for the overall good of both countries.

I am enthused, Madam Ambassador, because I think you have got the savvy, unlike, for example, my good friend Strauss. He would always come up and, you know, pick you off politically. That fell out.

There is a bigger problem, and there are two things that you should remember. No. 1, the opposition, not the enemy, but the opposition that I have watched develop and historically has recorded itself is: No. 1, of course, the Department of State. They always are wanting to give away the industrial backbone of America so that they could make friends. Japan, even under the most recent of administrations, is always a special relationship. We have got a special relationship, us. We are poor. We are poor. Their per capita income is $18,900 compared to ours, $18,600, so 45 years afterward, they are richer than we are.

But you have got the Department of State; you have got the multilaterals; you had Kendall running around for the last 30 years. You don't ship water around the world. You add a little bit of extract, and he was in downtown Moscow with his. Breshnev showed me his Pepsi belt buckle. He kept an emergency committee against tariffs, which was a terrible thing.

Then the banks, because CitiCorp and Chase Manhattan made the majority of their money outside, you know, and now, by gosh, they are way down. CitiCorp is No. 21, and the Japanese have the first 10 banks. So they have sort of muted their opposition, but now you have got the retailers.

When we had the textiles, the newspapers jumped us because we had gotten contributions from the textiles. I don't know where they expect me to get it if I run in South Carolina. [Laughter.]

But in any event, it was diminimus, because they are all Republican down there. In any event, there is nothing wrong with that, acting on volition, but what happens is, I go out to Bloomingdale's and can get two exactly the same ladies blouses for $32, one made in Taiwan and one made in the United States, both the same price. The same thing with shirts at J.C. Penny's, one made in Hong Kong, one made in the United States, both the same price.

At Herman's, they have catcher's mitts for $17, one made in Korea, one made in the United States. The retailers are not, by bringing in the imported product, diminishing the price. They are making a wonderful killing. The Washington Post's annual statement will show that in 1987, they made $1 billion; of which $893 million was from retail advertising, so those newspapers that are criticizing us, know whose bread is buttered and who is responding to whom.

Do you see what I'm saying?

That is the crowd, and, of course, the Washington reps. They have got more people downtown here in Washington representing the Japanese than we have got in the Congress representing Americans. So that is the opposition that will keep feeding you this free trade, free trade.

Let's talk of tariffs and protectionism.

This committee also supports Chief Justice Burger and the Commission on the Bicentennial. Last week we had bicentennial of the Congress and we went to the National Portrait Gallery, and there was Hamilton and the report on manufacturers. It was very interesting, because you get to the historic past where Hamilton was told by Carter in England, about this comparative advantage that they will give you. That is what they told him back in 1789, "You and the fledgling Nation, the United States of America, ship to us what you produce best, your comparative advantage. There will be no tariffs, there will be no barriers, and we in England will ship back to you what we produce best. There will be no tariffs."

In Hamilton's booklet, he said, "Bug off!" He said, "We are not going to remain your colony and just ship to you our wheat and our foodstuffs, our timber, our coal, our natural resources," and the very first bill that passed the National Congress on July 4, 1789, was a tariff bill. Protectionism started this wonderful industrial giant.

I think that ought to be remembered. We don't want to start a trade war; we don't want to start protectionism. They have started it. We emulated the British; the Japanese emulated us. You can't blame them. It has worked.

Talking about the Pacific Rim, in the year 2000, in 11 short years, the GNP of the Pacific Rim will exceed that of the EEC and the United States combined. That is why we have got to get together with free trade with Canada and start banding together. That is a powerful economic competition which we have, because the Marshal Plan worked. There is a tremendous capitalistic giant we have built out there, and the Pacific is going to gobble us up if we don't begin to start drawing some lines and open up the market where money talks.

You don't have to learn Japanese. It is not the language and the cultural difference and the different snow for different skis and all that hooey. It is money. Money talks and the market forces operate in your business.

Now you are good looking, and you are good and attractive and you could ordinarily get a vote, but you are not going to get a vote just that way. You have got to be tough, and I think you can do it.

I just told Senator Rudman, I think we finally have got us a trade representative. If there is any way we can help you, let us know.

Ambassador HILLS. Thank you, Mr. Chairman.

Senator HOLLINGS. We appreciate it.

ADDITIONAL COMMITTEE QUESTIONS

Senator RUDMAN. Madam Ambassador, thank you. You came over here to testify on your budget, and you have been Hollings-ized.

Senator HOLLINGS. We really appreciate it. There will be some additional questions which will be submitted for your response.

[The following questions were not asked at the hearing, but were submitted to the Office for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

TEXTILES

Question. Textile imports rose 169 percent between 1980 and 1989. All told, you have 40 bilateral agreements to work on plus all the other imports from more than 100 countries.

(A) What is your strategy for renegotiating these bilaterals?

(B) Have you given some thoughts to giving unfilled quotas from Far Eastern suppliers to the CBI as I have advocated for years.

(C) Are you considering a freeze on major suppliers?

(D) In recent years, the textile negotiating staff has had 3 full-time negotiators. At least that many would be required for the full agenda you face this year. What are your plans for your textile negotiating staff, particularly with regard to the appointment of a Chief Textile Negotiator.

Answer. (A) Renegotiation of expiring textile agreements with major suppliers will be one of our top challenges this year. Thirteen bilateral agreements are scheduled to expire this year; in addition, we are renegotiating one agreement which expired at the end of last year. We have already started discussions with Korea on renegotiating the bilateral agreement, and we have concluded negotiations renewing expiring agreements with Peru and Costa Rica as well as expiring limits with Bangladesh.

In addition, we place a high priority on constant monitoring of our existing bilateral agreements and imports from countries with whom we do not have agreements. Indeed, we have just concluded a new bilateral agreement with the United Arab Emirates.

In considering all expiring agreements, we will exercise our full rights under the Multifiber Arrangement to prevent disruption of our market and to ensure orderly development of trade. Each agreement will be considered in the context of current and anticipated trade patterns, and there may be cases where it is appropriate to let the agreements expire. This is not the case, however, with Korea and Taiwan, which combined supplied about $5.6 billion worth of textile and apparel imports in 1988. In these cases, we will seek comprehensive agreements with low growth rates on quotas. We will also seek downward adjustments in consistently underutilized quotas, in line with our rights under the Multifiber Arrangement.

Finally, while imports of textiles and apparel did increase between 1980 and 1986, imports leveled off in 1987 and actually declined in 1988.

(B) The Administration is strongly committed to encouraging economic development and stability in the Caribbean and Central America. Under the Caribbean Basin Initiative, one important element of our efforts is to support the expansion of apparel exports of these countries, including apparel products assembled in CBI countries from U.S. formed and cut fabrics. These products enter the United States under the Special Access Program. The Administration also supports the concept of enhancing the CBI program through new legislation, and we are working with members of the House and Senate to develop effective legislation to this end.

At the same time, the Administration recognizes that large increases in imports from other countries, especially those in the Far East, may result from the existence of largely underutilized quotas. Where such situations give rise to the possibility of surges which disrupt the U.S. market, we will seek to negotiate appropriate adjustments or even elimination of these restraint levels in line with our rights under the Multifiber Arrangement.

Direct linkage between these two objectives, however, raises some legal questions, including the consistency of such linkage with our obligations under the Multifiber Arrangement. Further overt linkage may complicate achievement of Administration objectives.

(C) Whereas the United States does not plan to seek to negotiate a freeze on imports from major suppliers, in recent renegotiations of agreements with our largest suppliers, we sought and obtained substantially reduced growth rates. Agreements negotiated with China, Hong Kong, Korea, Taiwan and Japan contain growth rates and flexibility provisions well below those provided to other suppliers.

(D) In past years, the Chief Textile Negotiator's office has functioned effectively with both two and three full-time negotiators. We are presently engaged in a major review of resource requirements, and will carefully examine the need for additional resources in the textiles office. We expect to announce the appointment of a Chief Textile Negotiator soon.

Question. Recently the Office of Textiles and Apparel reported on the barriers many foreign countries maintain to keep American textile and apparel products out of their markets. Your office is in the process of preparing a list of actions to be taken under the "Super 301" provision of the new trade law.

Will textiles and apparel be included in that list?

Answer. It's too early to predict what foreign barriers will be designated as "priority practices" under the new "Super 301" provision. The law requires that we attempt to quantify the impact of the most significant trade barriers, and concentrate our efforts where the United States has the greatest export potential. By April 30, we will publish the annual National Trade Estimates Report, and during the month of May, we must identify, on the basis of that report and advice from our private sector advisors, those barriers the elimination of which would have the most significant potential to increase U.S. exports.

Question. In bilateral textile trade negotiations, when the country we are negotiating with has been found beyond a reasonable doubt to have been involved in unfair trade practices-transshipment, false declarations, dumping, subsidy.

Do you think a penalty should be extracted from the country within the context of the negotiations?

Shouldn't these countries be made to pay for unfair practices?

Answer. We continuously examine allegations of unfair trade practices in textile and apparel trade, and we have recourse against these actions in our bilateral agreements and the Multifiber Arrangement, which allow for us to take action against fraud and charge any overshipments against quota. In addition, we have rights under the General Agreement on Tariffs and Trade (GATT) and U.S. trade law to impose offsetting duties when countries have been found to engage in dumping or subsidization, and we exercise those rights to their full extent.

STEEL: DUMPING/SUBSIDIES

Question. I have grave doubts about the ability of the U.S. government through international negotiations to end dumping and subsidies in steel trade quickly. This task will be a difficult and lengthy one, particularly when you realize these practices go back 30 years or more. When will the Administration be fleshing out its commitment to an extension of the voluntary restraint agreements for the steel industry?

Answer. A key policy goal of this Administration is to achieve an international consensus to eliminate unfair trade practices. Pending that outcome, the VRA program may have to be extended. The Administration is in the process of reviewing the specific. In addition, the Administration is reviewing modifications to the program, specifically those that will address the concerns of steel consumers. We hope that this review will be completed by mid-April.

MANAGED TRADE

Question. Last week, you said that we may have to take a "managed trade" approach with some countries, i.e. setting specific targets on a product-by-product basis for U.S. sales in Japan. I don't know if you have read Clyde Prestowitz's book, "Trading Places," but Mr. Prestowitz, based on his years of experience with Japan, advocated this type of approach. I urge you to read the book if you have not. Could you discuss this alternative approach that is under consideration.

Answer. There has been absolutely no change in, or reversal of the free-trade, open-market policy that the United States has followed for some time toward Japan and other nations in the world.

As I explained in my testimony before the Senate Finance Committee, proposals for managed trade with Japan—or any other country—run contrary to the stated goal of U.S. trade policy, which is to open markets not to close them. We seek an ever-expanding multilateral trading system based upon equitable and enforceable rules. We do so not just for a more prosperous America, but for a freer, fairer, more prosperous world.

The U.S. bilateral trade imbalance with Japan presents many difficult and complex issues, and demands that we develop effective proposals and engage in hard bargaining. We intend to do both.

U.S.-Japan trade relations will be addressed in the usual way through the formal interagency process. In that process, a variety of approaches will be considered, provided they are consistent with our overall policy of promoting open markets and free trade.

TRAVEL SCHEDULE

Question. Ambassador Hills, I recall when Bob Strauss was USTR he caused a little fuss because he rode the SST. If I read your statement correctly you will need something even faster than the SST. On one page you fly to Brussels on March 10th with Secretary Yeutter, and then a couple pages later you are back here for the first meeting of the U.S.-Canada Trade Commission on March 13th. Is that correct, and how will you maintain such a schedule?

Answer. Energetically and enthusiastically.

INDUSTRY ADVISORS

Question. On February 21st I wrote to you about the appointments of Max Tinsley and Robert McCullough to one of your industry advisory committees. These appointments were recommended by the Hand Tools Institute. Will you be able to make these appointments?

Answer. We were pleased to receive the nominations by the Hand Tools Institute of Messrs. Tinsley and McCullough to the Industry Sector Advisory Committee for Consumer Goods (ISAC #4) and have recently responded to your letter of February 21. Please refer to that letter in response to this question.

EC BAN ON U.S. BEEF

Question. I think most of us agree that the European Community's ban on American beef imports is an unfair trade barrier, erected without any scientific justification whatsoever. The United States under your leadership has assumed a strong and steady course in response to this action. I understand the EC and the American Task Force Negotiators are in Washington discussing this matter right now. Can you reassure this committee about our intention to reopen that market, not to cave in to this ill-disguised trade barrier, and stick to our principles?

Answer. I can assure the Committee that I will not "cave in" on this matter. You are correct, there is an important principle involved here. If we permit political whims—rather than science—to become the basis for national health and safety import requirements, the global trading system for agricultural products is doomed.

At this point, we've lost about $100 million worth of trade as a result of the EC hormone ban. We retaliated by blocking EC imports worth an equivalent amount. In terms of aggregate trade, we're even. By retaliating, we also demonstrated to other nations that might be contemplating similar action, that there is a cost for adopting such measures.

We have now established a Task Force which is trying to devise a method for reopening the market. However, that will be very difficult unless the EC has more political flexibility than it has demonstrated thus far. I've agreed to adjust the retaliation only to the extent we are able to reopen the market. Otherwise, it will stay in place. Although I'm not eager to escalate this issue, I'm prepared to increase our retaliation should the EC Council decide to further restrict our trade.

QUESTIONS SUBMITTED BY SENATOR FRANK R. LAUTENBERG

SECTION 337

Question. As I have actively sought the enhanced protection of intellectual property, I am concerned about the recent GATT panel report on section 337. How does the U.S. Government intend to proceed in response?

Answer. The issue of adopting the section 337 panel report has been on the GATT Council's agenda in February and March. In both of those Council meetings, the United States has raised its concerns regarding the basis for the report's conclusions and the implications of the panel's interpretation of GATT articles that extend beyond section 337. We have urged and will continue to urge other GATT contracting parties to carefully consider the sweeping precedents adoption of the report entail before reaching a decision on whether it should be adopted. In any event, we do not expect the Council to proceed to a decision for some months. For our part, we do not intend to diminish the level of enforcement of intellectual property rights currently available to owners of intellectual property.

Question. What, if any, impact will the report have on the exercise of Presidential review under section 337? Should intellectual property owners expect that the President will be any less supportive of remedies under section 337, in light of the panel decision?

Answer. I do not anticipate any change in the recommendations that I make to the President on review of orders issued under section 337. The GATT Council must adopt a report before it has any status within the GATT other than the views of the panelists. That has not occurred. Moreover, even if all the other GATT members ultimately favor adoption, we have a number of options under current GATT dispute settlement rules. We can unilaterally block adoption of the report, or we can attempt to negotiate a settlement after adoption that may or may not include amending section 337.

The Administration believes that section 337 is an important means of enforcing intellectual property rights and that enforcement of rights at the border is an essential part of an effective enforcement system. We supported the recent amendments to section 337 that facilitate access to this procedure and the remedies available under it. Owners of intellectual property rights should not be discouraged from filing complaints against imports that they believe infringe their rights. While we believe strongly in effective dispute settlement in the GATT, we must also have an effective and viable means of enforcing our domestic laws.

Question. What, if any, impact will the report have on other U.S. statutes (e.g., 15 U.S.C. 1124) that provide for the exclusion from the U.S. market of products that infringe intellectual property rights?

Answer. Many GATT contracting parties have laws similar to 15 U.S.C. 1124 and I can assure you that the U.S. Customs Service will continue to enforce our laws providing for border enforcement of intellectual property rights. The panel report recognizes that enforcement of intellectual property rights at the border may be necessary to have effective enforcement. Although it is difficult to predict how a GATT panel would view a particular law, the report, if it is adopted at some time, could affect how a wide range of laws of the United States and other GATT members that have an indirect effect on the sale, distribution, and use of imported products are considered under the GATT. That potential will have to be considered during the discussions of the report and in reaching our decision on whether to agree to adopt it. The potential effect is also why we are urging other GATT members not to rush to judgment on adopting the report.

Question. Is it the case that the panel report was based on an evaluation of section 337 before the 1988 amendments? Is it the case that the amendments were not the basis for the report's conclusions?

Answer. The GATT panel based its decision on section 337 as it existed at the time the panel was established by the GATT Council in October 1987. However, the panel report does refer to the Omnibus Trade and Competitiveness Act in two instances.

First, the panel noted that the amendments repealed several of the elements said to give advantages to respondents. Second, the report refers to the fact that the process patent amendments in the 1988 Act make district court actions available against imports that are produced by means of a process that would infringe a U.S. patent if practiced in the United States. The panel noted that this supported its conclusion that it is not necessary to have a separate procedure for dealing with imports alleged to infringe a process patent.

Although the panel report is not based on the 1988 amendments, the panel's findings and analysis imply that the panel would also consider the amended law inconsistent with U.S. GATT obligations.

Question. What, if any, impact will the report have on the Administration's exercise of other powers under the trade laws—such as the power to withdraw GSP from nations that accord inadequate protection of intellectual property rights, and the powers under section 301? Will the Administration place increased emphasis on these tools?

Answer. If at some time the report is adopted, I do not anticipate that it will affect our use of section 301 or the President's consideration of the extent to which a GSP beneficiary country provides adequate and effective protection of intellectual property.

Congress has provided the Administration with additional tools under section 301 to obtain improved protection and enforcement of intellectual property rights. The new procedure for designating priority countries and initiating section 301 investigations against certain of those countries will ensure that the Administration continues to use section 301 aggressively.

Question. What, if any, impact will the report have on the position of the U.S. in the Uruguay Round?

Answer. The existence of this report, whether it is adopted or not, will reinforce the need for adequate standards and effective enforcement mechanisms in any GATT agreement on intellectual property. Our negotiators are ready to engage in substantive negotiations on effective enforcement and addressing the problems that make provisions such as section 337 important for the enforcement of intellectual property rights. We believe that our current GATT proposal is consistent with the panel report and will continue pursuing that objective in the GATT negotiations.

Question. Section 337, particularly as amended in 1988, offers intellectual property owners a relatively swift and affordable remedy for the violation of their rights. Even if the U.S. is successful in the Uruguay Round in securing stronger international standards of protection and effective mechanisms for the enforcement of those standards, does the Administration believe that would be an adequate substitute for section 337 particularly for smaller firms that are unable to afford the defense of their rights in a foreign or international forum?

Answer. It is too soon to tell what the outcome of the Uruguay Round negotiations on intellectual property will be and whether it will be satisfactory in all respects. In addition to the Uruguay Round negotiations, the United States has the option of amending Federal district court practice to provide a more accessible procedure if the report were adopted and we decided that we had to comply with the report's recommendation.

INTELLECTUAL PROPERTY

Question. Please provide a status report on the outlook for success of U.S. efforts to increase protection of intellectual property rights in the Uruguay Round.

Answer. Trade-related intellectual property rights (TRIP's) is one of the four areas on which GATT members were unable to reach a consensus in Montreal. Since the December meetings in Montreal, we have been meeting with GATT Director-General Dunkel and governments interested in the TRIP's negotiations to build support for the U.S. position. Our objective is to build a consensus to negotiate a GATT agreement which would include adequate standards for the protection of intellectual property, effective enforcement of rights internally and at the border, dispute settlement and the application of GATT principles of national treatment and transparency to intellectual property.

Although we face strong resistance from governments that oppose discussing intellectual property standards in the GATT, support for negotiations is growing among moderate developing countries. We anticipate that substantive negotiations will resume soon after the April meeting of the Trade Negotiating Committee of the Uruguay Round.

I believe achieving positive results from the TRIP's negotiations,is essential. Participants in the Uruguay Round should recognize the benefits, and the necessity, of progress in the TRIP's negotiating group and support the effort.

CHOCOLATE TARIFFS

Question. I have long been encouraging Taiwan to reduce its 17.5 percent duty on chocolate and chocolate confectionery products to 7 percent. I have also been encouraging Korea to reduce its duty on chocolate and chocolate confectionery from 20 percent to 7 percent. Please describe the Administration's efforts to encourage the Taiwanese and Koreans to eliminate tariff obstacles to American chocolate exports. How will your approach to this matter differ, if at all, from that of Ambassador Yeutter?

Answer. As a result of U.S. pressure, Taiwan has reduced unilaterally its import duty on chocolate and chocolate confectionery from 75 percent in 1984 to 17.5 percent in 1987. A proposed further reduction to 10 percent in 1988 was not implemented due to opposition from Taiwan's domestic chocolate manufacturers. Working closely with U.S. industry, USTR has continued to press the Taiwan authorities to liberalize this barrier to U.S. exports. In a comprehensive tariff proposal conveyed to the Taiwan authorities this week, USTR proposed that the tariff be reduced to 10 percent immediately; to 5 percent in 1990; and to zero in 1991.

As a result of U.S. pressure, the Korean government proposed, and the National Assembly passed in December 1988, a 5 year tariff reduction plan which begins in 1989 and ends in 1993. The plan brings Korea's average (non-trade weighted) tariff rates to 15 percent in 1989 and gradually lowers them to 8 percent in 1993. The tariff rate on certain chocolates and chocolate confectionery will be 10 percent between 1989 and 1991 and will be lowered to 9 percent in 1992 and to 8 percent in 1993. The rate on other kinds of chocolate and chocolate confectionery was lowered to 20 percent in 1989, 16 percent in 1990, 13 percent in 1991, 10 percent in 1992 and 8 percent in 1993. However, Korea recently announced that, effective on March 1, 1989, it has reduced the tariff rate on these products to the 16 percent rate originally scheduled for 1990. U.S. industry representatives have expressed satisfaction with this announcement. Korea's tariff rate on candies is 15 percent in 1989, 13 percent in 1990, 11 percent in 1991, 9 percent in 1992 and 8 percent in 1993. We are pleased with these reductions, but we will continue to encourage the Korean government to implement them before schedule.

Question. I understand that both Korea and Taiwan have been considering reductions on a group of products of special interest to the United States. Is chocolate among those products? Are we seeing any progress on this issue? How close are we to resolving this matter with both the Koreans and the Taiwanese?

Answer. The Taiwan authorities are in the process of formulating a package of tariff reductions which they intend to present to their legislature for approval later this Spring. The contents of this package are not yet known. We have made our interest in a further reduction of the duty on chocolate known to the Taiwan authorities, and we are hopeful that chocolate will be included in the final package.

Korea's tariff reduction package is described in answer 1 above.

QUESTION SUBMITTED BY SENATOR WARREN RUDMAN

CARIBBEAN BASIN INITIATIVE: TOURISM

Question. In your budget justification you state that the Office of the U.S. Trade Representative "consulted with Eastern Caribbean states on approaches for increasing their participation in the CBI (Caribbean Basin Initiative), including administrative actions by the U.S. government to promote tourism in this part of the Caribbean, which tends to attract fewer investment projects than some of the larger, more advantageously situated islands." I have no problem with attempting to increase economic activity in the Caribbean, since it serves our long-term interests. However, I am concerned that one agency of the U.S government is promoting tourism overseas when we've had to fight to maintain funding for the U.S. Travel and Tourism Administration, the agency which promotes tourism by foreigners in the United States. What is the nature of the consultation that has occurred with these Caribbean nations, and what "administrative actions by the U.S. government" are referred to that could promote tourism in the Caribbean?

Answer. The Eastern Caribbean countries feel that they have not benefited from the Caribbean Basin Initiative to the same extent as the larger Caribbean Basin countries. Therefore, we have been speaking with representatives of these small countries to determine whether, and in what manner, we should enhance the CBI for their benefit. Since these countries have a comparative advantage in the tourism sector that could be developed further, naturally this sector is one that has been discussed.

However, we have concluded that the CBI should provide preferences for all beneficiaries on an equal basis, with individual States able to determine for themselves which benefits they choose to utilize. In this regard, we are considering whether training in the tourism sector should be proposed as an amendment to H.R. 1233, the Caribbean Basin Economic Expansion Act of 1989. We are not planning to suggest new programs for the U.S. Travel and Tourism Administration that would have a budgetary impact.

QUESTIONS SUBMITTED BY SENATOR BROCK ADAMS

JAPAN: TRADE DEFICIT

Question. There has been discussion of a managed bilateral trade program with Japan if the U.S.-bilateral trade deficit with the Japanese does not decline. Such an option, which would necessitate the setting of U.S. import and export targets with the Japanese, was rejected by the Congress during consideration of the omnibus trade bill. Instead, Congress used a broader approach to trade deficit reduction through improvement in our trade laws dealing with unfair trade practices and surges in imports which cause serious injury to U.S. industries and workers.

Please outline what specific approach to U.S.-Japanese trade relations the USTR believes is appropriate.

Answer. I would like to make clear that there has been no reversal of the free-trade, open-market policy that the United States has followed for some time toward Japan and other nations of the world. As I explained in my recent testimony before Congress, we are currently in the midst of an interagency process to address U.S.-Japan trade relations. During this process, a variety of trade options and approaches will be fully considered. We are also currently in the process of responding to the requirements of the 1988 Omnibus Trade Act which gives USTR new tools to address unfair foreign trading practices, such as the enhanced Section 301 provisions. Let me stress, however, that our overall policy of promoting open markets, free trade, and an expansion of the multilateral trading system will remain consistent.

SECTION 301: SOFTWARE

Question. Under the Omnibus Trade Act, on May 30th of this year, the USTR is required to identify those countries that deny adequate protection or market access for intellectual property rights. Once such countries are identified as "priority foreign countries," under the new trade law, the Administration is required to initiate Section 301 investigations against these countries. The software industry has petitioned USTR to designate Italy, Taiwan, Mexico, Brazil, Thailand and the People's Republic of China as countries that fail to provide adequate and effective intellectual property protection and permit fair market access.Will software piracy be addressed in the May 30th report?

Answer. An interagency task force is in the process of examining our trading partners' laws and practices under the new intellectual property provisions in section 182 of the 1988 Omnibus Trade Act. The task force requested and received many useful submissions from the public on problems experienced in obtaining adequate and effective protection of intellectual property in other countries. Whether a country provides adequate copyright protection for computer software and effectively enforces that law is one of the issues that the task force is considering in making its recommendation on designation of a country as a "priority foreign country."

QUESTIONS SUBMITTED BY SENATOR TED STEVENS

EC: FUR LABELING

Question. Ambassador Hills, on February 18th your staff met with representatives from the European Community to discuss the fur labeling issue. Can you tell us about those discussions?

Answer. In a meeting on February 16th with EC Commission representatives, my staff raised our concern with respect to the fur labeling issue. The EC representatives said they were already aware of our concern. My staff indicated that a demarche expressing our concern would be delivered to the Commission shortly.

DEMARCHE

Question. My office was advised by your staff on February 27th that you were working on a demarche to send to the American mission in Brussels to present to

European Community leaders. Has that demarche been delivered yet and what can you tell us about its contents? Please provide a copy of the demarche for the record.

Answer. The U.S. demarche was delivered to EC Commission officials in Brussels on March 3. Following are the points contained in the demarche:

It is our understanding that the Commission is considering a directive to require labels to be affixed to certain imported fur garments stating that the garments contain fur from animals commonly caught in leg-hold traps.

The EC is our single largest market for fur skins, accounting for slightly more than half of total exports in 1988.

We are concerned that such a directive would be an obstacle to exports of U.S. fur skin and fur exports to the EC.

This issue is sensitive in the U.S., and involves the economic interests of a wide spectrum of Americans, including indigenous peoples. Numerous members of Congress and State Government officials have expressed concern about the proposed labeling requirement.

In raising this issue, we are not dismissing the serious concerns which underlie it. However, the issue is more complex than it may appear, because of the variety of trapping techniques and the drawbacks of some of the alternatives. The question is how best to address legitimate concerns and still meet the Community's obligations to an open trading system.

The U.S. Government requests that the Commission consider carefully the views and interests of the EC's trading partners in its consideration of a fur labeling directive. The U.S. would be pleased to engage in discussions on this issue, and requests that the Community delay action until such discussions are held.

QUESTIONS SUBMITTED BY SENATOR MARK O. HATFIELD

JAPAN: TRADE BARRIERS ON WOOD AND WOOD PRODUCTS

Question. Please update me on the progress we have made on reducing the Japanese trade barriers (tariffs) on finished wood products. Are there significant trade barriers still in place in Japan which limit our access to its markets? What additional actions can you take to increase our access to the Japanese markets? Is there any progress in this regard to report?

Answer. The United States achieved improvements in access to the Japanese market for wood products during the Forest Products Market-Oriented Sector-Selective (MOSS) process. As a result of these efforts, U.S. exports of lumber and wood products have increased overall and the ratio of finished products to logs has improved.

Certain issues remain to be resolved, including additional tariff reductions and product classification matters. To further this process, we have requested that a technical subgroup of the Forestry MOSS meet. We are awaiting a response from the Government of Japan on this.

In addition, we are addressing wood products issues in the Uruguay Round of Multilateral Trade Negotiations under GATT. In that process, we will be seeking reductions of remaining tariff and nontariff barriers to trade throughout the Far East, including Japan.

Question. There currently is considerable controversy in the Pacific Northwest regarding the export of raw logs to Japan and other Pacific Rim nations. Although Federal law currently prohibits the export of logs harvested from Federal forest lands, logs cut from State and private lands can be exported. In your opinion, what effect would the prohibition of all raw log exports—Federal, State and private—have on our trade relations with Japan?

There is legislation before Congress that would allow the States to ban the export of raw logs harvested from State lands. If this legislation were to pass, how would it affect our trade relations with Japan?

Answer. A prohibition on all raw log exports—Federal, State and private—could, indeed, have an adverse effect on our trade relations with Japan. In 1988, U.S. exports of softwood logs to Japan totaled $1.3 billion and exports of hardwood logs amounted to $32 million. Restrictions on log exports could have a sizeable negative impact on our overall trade balance with Japan, especially since a full or partial ban on log exports would not necessarily lead to an equivalent increase in the sale of U.S. value-added lumber products.

Moreover, any additional restrictions on exports of logs would be contrary to the efforts we are making within the Uruguay Round of GATT negotiations to expand trade in wood, along with other products. Enabling individual States to impose their own bans would create confusion, conflicting policies and trade distortions. Finally, rather than encouraging trade liberalization in Japan for finished wood products, further prohibitions on log exports could lead to Japanese retaliatory market access restrictions.

INTERNATIONAL TRADE COMMISSION

STATEMENT OF ANNE BRUNSDALE, ACTING CHAIRMAN

ACCOMPANIED BY RICHARD ARNOLD, DIRECTOR OF FINANCE AND BUDGET

BUDGET REQUEST

Senator HOLLINGS. We will now hear from the International Trade Commission. The 1990 request is for $39,943,000, providing a total of 502 positions. To present this request is the Acting Chairman, Ms. Anne Brunsdale who is accompanied by Richard Arnold, the Director of Finance and Budget, as well as the other commissioners. Ms. Brunsdale, your prepared statement will be printed in full in the record, and we are glad to hear from you if you want to highlight it or give it in full. We don't want to cut anybody short, but we have got a full committee meeting. We are delighted to have you.

Ms. BRUNSDALE. Thank you very much, Mr. Chairman. Good morning. I know it is late in the morning. So I will read one paragraph of my prepared statement, and then I will be very happy to answer any questions you may have.

The budget request I am presenting this morning has the unanimous approval of the Commission. It totals $39,943,000 and provides for 502 full-time positions and reflects an increase of $3,985,000 over our fiscal 1989 appropriation. Two-thirds of the increase is for nondiscretionary salary costs, including full funding for our 502 positions and anticipated step increases, promotions, and related benefits, as well as funding for the effects of the January 1989 pay raise.

The increases do not represent growth in either operating or program levels. Rather, they would maintain operations at current authorized levels and provide sufficient resources to allow us to carry out our responsibilities.

PREPARED STATEMENT

I will end with that, and I would be delighted to answer your questions, either now or in writing.

[The statement follows:]

STATEMENT OF ANNE BRUNSDALE

Mr. Chairman and members of the Subcommittee, I am pleased to be here today to present the U.S. International Trade Commission's budget request for fiscal year 1990. Seated beside me is Richard Arnold, the Commission's Director of Finance and Budget. Commissioners Alfred Eckes, Seeley Lodwick, David Rohr, Ronald Cass, and Don Newquist also are here today.

THE BUDGET REQUEST

The budget request that I am presenting has the unanimous approval of the Commission. It totals $39,943,000 and provides for 502 full-time permanent positions.

In developing this budget request, the Commission examined its needs and made every effort to improve our utilization of resources. The increases do not represent growth in either program or operating levels. Rather, they maintain Commission operations at current authorized levels, and provide sufficient resources to allow the Commission to accomplish its mission.

It is always difficult to anticipate all of the demands that will face the Commission 12 to 18 months in the future. Due to the heightened uncertainty of our investigative caseload this year and the additional tasks placed on us by new legislation, it would be premature to request a change in authorized resource levels at this time.

The $39,943,000 represents an increase of $3,985,000 (or 11 percent) over our fiscal year 1989 appropriation. Two-thirds of this increase (or $2,598,000) is for nondiscretionary salary costs, including full funding for our 502 positions, anticipated step increases, promotions and related benefits, as well as funding for the effects of the January 1989 pay raise. The balance of the increase ($1,387,000) is for necessary support services.

The Commission's substantive responsibilities involve cases under the import relief statutes and studies and reports under section 332 of the Tariff Act of 1930 (19 U.S.C. § 1332). Our total investigative workload, which declined from 239 investigations instituted in fiscal year 1985 to a low of 92 investigations in fiscal year 1988, is expected to increase in fiscal year 1989 and fiscal year 1990. The Commission recently projected some 122 new investigations for fiscal year 1989 and 125 for fiscal year 1990. Data through the first 5 months of fiscal year 1989 suggest that our estimate for fiscal year 1989 may be somewhat low.

In addition to our regular investigative workload, the Commission is heavily involved at this time in providing support to executive branch efforts on the GATT-sponsored Uruguay Round of trade negotiations and in meeting the requirements of the Omnibus Trade and Competitiveness Act of 1988.

IMPORT RELIEF INVESTIGATIONS

The largest part of our caseload consists of investigations under the antidumping and countervailing duty statutes (section 303 and title VII of the Tariff Act of 1930, 19 U.S.C. §1303, 1671 et seq.).[1] The title VII caseload, which declined from 185 new investigations in fiscal year 1985 to 65 in fiscal year 1988, is expected to increase. We project that 75 new title VII investigations will be instituted in fiscal year 1989 and 75 in fiscal year 1990. In the first 5 months of fiscal year 1989 the Commission instituted 43 title VII cases compared to 11 during the comparable period for fiscal year 1988. This suggests, as I indicated above, that our fiscal year 1989 projection may be low.

The Omnibus Trade and Competitiveness Act of 1988 amended portions of the antidumping and countervailing duty statutes in ways that may increase both the number of cases filed and the amount of Commission effort required in conducting the investigations. For example, new provisions add a number of factors, such as the impact of imports on research and development efforts by domestic industries, to be considered in assessing injury or threat of injury. The act also requires the Commission to release under administrative protective order (APO) a much broader range of data to a broader class of requesters than was required previously. That is, the Act requires release of all business proprietary information presented to or obtained by the Commission during a title VII investigation, whereas in the past the Commission released only the price and cost-of-production data of those firms supporting the petition. While the Commission's experience with administering this new provision is still limited, preliminary indications are that additional resources are being used.

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[1] There are two ways to count the title VII case load—by investigation numbers and by petitions (i.e., by product line). In the case of title VII, a single petition is given one investigation number for each foreign country covered by the petition and sometimes one for each separate major product, even though typically a single investigative team does all the work, a single hearing is held, information is collected from the same group of domestic producers, and a single report is produced. Thus, counting investigation numbers will give a higher workload figure than counting petitions.

For example, in fiscal year 1986, the Commission instituted 158 title VII investigations covering 87 petitions (product lines.) In fiscal year 1987, 99 investigations were instituted covering 55 petitions. And in fiscal year 1988, the Commission instituted 65 investigations for 33 petitions. As the data indicate, the product-line approach reflects a declining caseload at a rate consistent with the decline when counted by investigation numbers.

In addition to the expected rise in caseload in fiscal year 1989, we also expect the sophistication of the analysis required by our cases to continue to increase. Moreover, the Commission's new programs involving data verification and statistical support will increase the number of work-years devoted to each investigation.

Some of the Commission's more publicized cases are the so-called fair-trade cases—that is, cases in which petitioners need not allege any unfair trade practice in order to obtain import relief. These import relief petitions are filed under sections 201 and 406 of the Trade Act of 1974 (19 U.S.C §§ 2251 and 2436). Section 201 is known as the "escape clause." In section 201 investigations, the Commission determines whether domestic industries are eligible for import relief and recommends appropriate action to the President. In addition, under section 204 of the Trade Act (19 U.S.C. § 2254), the Commission conducts "review" investigations and reports to the President on the probable economic effect of modifying, extending, or terminating the relief previously provided by the President as a result of a section 201 petition. Section 406 of the Trade Act of 1974 authorizes section 201-type investigations on market disruption from imports from nonmarket countries.

During fiscal year 1988, the Commission instituted one escape-clause investigation and one review investigation. We project two escape clause investigations for each of fiscal year 1989 and fiscal year 1990. In addition, the Omnibus Trade and Competitiveness Act of 1988 might increase the Commission's effort in connection with the escape clause provisions. For example, a new provision authorizes expedited determinations 21 days after a petition is filed in cases involving perishable agricultural products, provided that certain monitoring has been underway for at least 90 days. The precise impact of the new law on Commission activity is uncertain at this time.

The Commission expects that significant resources will continue to be devoted to investigations under section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337). These investigations are based on complaints alleging unfair methods of competition and unfair acts in the importation or sale of articles into the United States, typically, the infringement of an intellectual property right, such as a patent, trademark, or copyright. Currently, the Commission is concluding significant investigations involving EPROM's (erasable, programmable computer memory components) and in the area of biotechnology.

We project that 24 new section 337 investigations will be instituted in fiscal year 1989 and 28 in fiscal year 1990, compared to 11 in fiscal year 1988. During the first 5 months of the fiscal year, we instituted four such investigations. Another four complaints have been filed since the end of January. It should be noted that the number of section 337 investigations instituted does not, of itself, accurately reflect workload. The complexity of the technology at issue, the number of alleged unfair acts, and the level of staff participation required in each investigation must be taken into account.

The Omnibus Trade and Competitiveness Act of 1988 amended section 337 in several significant respects. In investigations involving the alleged infringement of statutorily protected intellectual property rights, it removed the requirement that a domestic industry prove economic injury as a result of the alleged unfair act, and it expanded the definition of domestic industry. The act also authorized the Commission (1) to order seizure and forfeiture of articles under certain conditions, (2) to issue limited exclusion and cease-and-desist orders against respondents that fail to appear in section 337 investigations, and (3) to impose greater penalties for violation of cease-and-desist orders. Moreover, if a section 337 complaint includes a request for temporary relief, the Commission must now render a decision on such relief within 90 days (or 150 days in more complicated cases) and may require complainants to post bonds in order to obtain temporary relief. As a result of these amendments, section 337 investigations should be less costly for complainants in most instances.

STUDIES AND REPORTS

The Commission frequently receives requests from Congress or the President to conduct investigations on trade and tariff issues under section 332 of the Tariff Act of 1930 (19 U.S.C. § 1332). We expect requests to institute 18 new section 332 studies in fiscal year 1989 and 18 in fiscal year 1990, compared with 12 in fiscal year 1988 and 11 in fiscal year 1987. All of the studies instituted in fiscal year 1988 and fiscal year 1987, as well as in the first 5 months of fiscal year 1989, were the result of a congressional or a Presidential request.

We now have 13 section 332 studies underway, 7 of them requested by the President and 6 by Congress. Among the studies requested by the President are Service Sector Profiles and Barriers to Trade in Services; Agricultural and Tropical Products-Literature Search Regarding Trade Distortions and Effect of Trade Liberalization, and Calculation of Tariff Equivalents; United States/Israel Free-Trade Agreement—Probable Effects on U.S. Industry and Consumers of Certain Remaining U.S. and Israel Tariff Reductions; and Probable Economic Effects of Providing Duty-Free Treatment for Watches under the Generalized System of Preferences.

Studies currently underway at the request of Congress include Western Steel Market—Analysis of Market Conditions and Assessment of the Economic Effects of the Voluntary Restraint Agreements on Steel-Producing and Steel Consuming Industries; Pros and Cons of Initiating Negotiations on a U.S.-Pacific Rim Free Trade Agreement; Effects of Steel VRA's on Steel Consuming Industries; Economic Effects of Significant U.S. Import Restraints; and Effects of Greater Economic Integration within the European Community on the United States.

In fiscal year 1988, we completed a number of significant projects. They included five global competitiveness analyses requested by Congress—on textile mills, steel sheet and strip, U.S. automotive parts, oilseed and oilseed products, and optical fibers, technology and equipment. We also completed two studies requested by the President—the effect of foreign protection of intellectual property rights on U.S. industry and recent Japanese measures to promote structural adjustment.

Other studies completed in fiscal year 1988 included four requested by Congress—the use and economic impact of TSUS items 806.30 and 807.00, benefits to U.S. consumers from temporary duty suspensions in the Trade and Tariff Act of 1984, implications of foreign-trade zones for U.S. industries, and the pros and cons of initiating negotiations with Japan on the possibility of a U.S.-Japan free-trade agreement—and one study requested by the President—the continuity of import and export trade statistics after implementation of the Harmonized System.

Some of the technical support that the Commission provides to the United States Trade Representative in the Uruguay Round of trade negotiations is in the form of formal reports requested under section 332. We expect this to be a major activity over the next 2 to 3 years. In addition, the Omnibus Trade and Competitiveness Act of 1988 opens the possibility of a number of new types of 332 investigations, including the monitoring of "downstream" product dumping and additional monitoring related to "escape clause" actions. The extent to which these provisions will generate additional work is unknown at this time.

The Commission will continue to play an important role with respect to the Harmonized System. During fiscal year 1987 and fiscal year 1988, much of our effort in this area was focused on the conversion of the U.S. customs tariff into the nomenclature structure of the Harmonized System. This effort culminated in the publication of concordances and trade tables providing U.S. import and export trade data for the past 5 years in terms of the Harmonized System. Beginning with fiscal year 1989 and fiscal year 1990, the Commission will publish the Harmonized Tariff Schedule, a document similar in size and complexity to the old TSUSA. We expect that Commission staff will continue to be called upon to provide advice and assistance on these matters.

The Omnibus Trade and Competitiveness Act of 1988 provides for new Commission activities with respect to the Harmonized System, including investigations (1) to recommend changes to the Harmonized Tariff Schedule resulting from sustained Customs protests, (2) to recommend to the President ways of modifying the Harmonized Tariff Schedule to implement international agreements that promote uniformity, ensure modernization, alleviate administrative burdens, and make technical corrections, and (3) to assess the operation of the U.S. Harmonized System after its first year.

The Commission continues to produce periodic reports on specific topics as required by presidential proclamation or other legal requirement. In fiscal year 1988 these included reports on nonrubber footwear, rum, autos, tungsten, and the performance of the steel industry. Copies of these reports are provided to Congress, the Executive Branch, and other agencies, as well as to requestors outside the Government.

In addition to these reports and studies, the Commission provides numerous background reports on proposed legislation to the Commission's oversight committees, as well as a great deal of informal assistance. The number of such reports was over 100 in fiscal year 198B. This demand is expected to continue.

NEW OFFICES WITHIN THE COMMISSION

The Commission projects an increase of four positions and related costs in fiscal year 1990 to staff the new Trade Remedy Assistance Office and the Office of Inspector General. For fiscal year 1990, the costs of these new and expanded activities will be absorbed within the Commission's request for full funding of its currently authorized positions of 502 full-time positions.

Trade Remedy Assistance.—Pursuant to the Trade and Tariff Act of 1984, the Commission established a Trade Remedy Assistance Center (TRAC) to provide (1) general information to the public on remedies available under the trade laws and (2) technical assistance to eligible small businesses concerning petition and application procedures under trade remedy laws administered by the Commission. During fiscal year 1988, TRAC received approximately 230 inquiries from small businesses, Congress, government agencies, law firms, trade associations, the press, and academia.

The Omnibus Trade and Competitiveness Act of 1988 expands the scope of the assistance previously furnished through TRAC. The Act requires the Commission to establish a separate Trade Remedy Assistance Office to render technical assistance, up through appeals to the administering agency (including informal legal advice), to eligible small businesses seeking remedies and benefits under certain trade laws administered by the Commission and other Federal agencies. We expect that the number of requests for information and technical assistance from small businesses will increase in fiscal year 1989 and fiscal year 1990, particularly in view of the Act's requirement that the Small Business Administration facilitate access to the Trade Remedy Assistance Office.

The Commission officially established the new Trade Remedy and Assistance Office on November 8, 1988 and staffing for the new office is nearly complete.

Office of Inspector General.—The Inspector General Act Amendments of 1988 require the Commission to establish and maintain an independent Office of Inspector General by April 16, 1989. The Commission officially established the Office of Inspector General on February 3, 1989. We expect the ITC's Inspector General to be on duty soon, and an additional staff position should be filled soon thereafter. This office will require separate space and support services equivalent to those provided to other offices within the Commission. The establishment of an IG function at the Commission is an enhancement of our current internal audit function, which is provided by contract with a public accounting firm.

LITIGATION WORKLOAD

The Commission has authority to appear in court on its own behalf, rather than refer cases to the Department of Justice. The size and complexity of the Commission's litigation caseload has increased steadily since the early 1980's, from 39 active cases in January 1984 to 60 cases pending before the courts on December 31, 1988. Although the number of cases may diminish slightly in the near term, the Commission expects its litigation caseload to increase from the current level over the course of the year.

RELOCATION

Public Law 98-523 (October 19, 1984) authorized the transfer of the U.S. International Trade Commission's building at 701 E Street, N.W. to the Smithsonian Institution and required the General Services Administration to relocate all Commission functions in a single, downtown Washington, D.C. building. We completed our move into our new headquarters at 500 E Street, S.W., in January 1988. This is the first time since 1975 that all parts of the Commission have been at a single location. The Commission and its staff appreciate the strong support of our authorization and appropriations committees in this matter.

GENERAL ACCOUNTING OFFICE RECOMMENDATIONS

The General Accounting Office made several observations during the review of the Commission that it completed in February 1987. As a result, new procedures have been implemented in the areas of procurement, the safeguarding and handling of security information, and the safeguarding and handling of confidential business information. The Commission is reviewing its information resources management responsibilities and its methods of verifying data. Also, we continue to examine our questionnaire process.

CONCLUSION

It is likely that trade and trade legislation will remain in the forefront of public debate for several years. As a result, the Commission's quasi-judicial determinations under the trade laws will continue to play an important role. In addition, the new round of trade negotiations begun in Punte del Este in 1986 have created new demands for comment and advice. Finally, new trade legislation, the implementation of the Harmonized nomenclature, changing trade barriers, continued concerns over the treatment of intellectual property rights, among other things, will all affect the growing demand for sophisticated analysis in import relief investigations and for fact-finding studies requiring greater expertise in both international trade and industrial organization.

It is important that Congress have confidence in the Commission's ability to provide sound analysis and data to trade policy makers and at the same time to fulfill its responsibility for investigating claims under the import relief laws. The Commission's budget request for fiscal year 1990 will provide sufficient resources to meet these demands.

I will be pleased to answer any questions you may have.

Thank you.

LAPSED 1988 APPROPRIATION

Senator HOLLINGS. Madam Chairman, on the lapsing last year, the Commission lapsed $941,000. How come?

Ms. BRUNSDALE. We returned that amount to the Federal Government because we discovered, as we got toward the end of the year, that our caseload was down considerably over what we had expected it to be, and, therefore, our managers had not hired as intensively as we expected them to. So we returned the money that we did not need—as we have done in each of the past 4 or 5 years.

CARIBBEAN BASIN INITIATIVE

Senator HOLLINGS. On the Caribbean Basin Initiative, as you may know AID had been trying to get American firms to move to the Caribbean and take advantage of low wages and tax holidays, et cetera. What are your findings on how the CBI has impacted upon our trade?

Ms. BRUNSDALE. The value of imports from Carribean countries has been falling since the CBI program began, and only 6.5 percent of these imports actually benefited from the program in 1987.

Also, as you probably know, Senator, we recently issued a study on ethanol production in the Caribbean Basin. That study addressed a very narrow question; that is: What indigenous feedstock requirements would fulfill the purposes of the CBERA, and at the same time minimize damage to domestic U.S. interests.

We determined in that study that there was no one formula for the indigenous content requirement that would do all of those things. That leaves everybody a little up in the air, but it is a useful conclusion to have.

Senator HOLLINGS. Very good.

Senator Rudman.

VACANCY RATE

Senator RUDMAN. I just had a couple of questions. First, you have got a request here to fully fund the authorized staff up to 502 people. You have a vacancy rate of about 7.5 percent right now. The proposal would fill 492 of the 502 positions, which would leave a vacancy rate of only 1 percent. In terms of past practices, isn't that a little bit unrealistic, Madam Chairman?

Ms. **Brunsdale**. One percent in terms of past practices is a little tight, yes—not unrealistic, perhaps, but a little tight. It would require careful management.

Senator **Rudman**. The reason I ask the question is because, obviously, one of the things that we are going to do in this subcommittee is to try to deal within the framework of whatever the Budget Committee finally decides in terms of our allocation. It is amazing how every dollar can count, which brings my next question.

An outlay freeze under a Bush administration proposal, if you were to apply that to your 1990 budget, would bring you to a $35 million figure. I am just wondering if we did that what effect would that have based on your current caseload and your current vacancy rate.

CASELOAD

Ms. **Brunsdale**. Let me give you a little background, if I may. In the past 3 years, we overestimated our caseload, because we underestimated the rapidity of the decline in cases. As a result, we gave back a considerable amount of funds in each of those 3 years.

This year, it seems likely that we have underestimated the rate of increase in the caseload. In the first 5 months, we have instituted 59 cases versus 20 in the first 5 months of last year. If caseload continues to grow at that rate without any increase or decrease, it will end up above our projection of 122 cases for this year. It will be closer to 145.

So it appears that our 1990 request is realistic. Now, we are a part of the U.S. Government, and we will always make do as well as we can with what we have to make do with.

Senator **Rudman**. It is not a large request. I wanted to ask the question just to see. As we get down the line here, which will be some months away, you will have a better feeling about your caseload estimate, and that might give us an opportunity to make an adjustment. We obviously don't want to underfund the agency. You have no control over your caseload. It is uncontrollable, like the Judiciary.

Thank you, Mr. Chairman.

Senator **Hollings**. How do you account, Madam Chairman, for the decline in the caseload? From your experience, what would be your observation for its decline?

Ms. **Brunsdale**. I think, Senator, there are a number of factors. It is very hard to determine which is the more important and how they interact. One factor, clearly, is that the parties were waiting for the trade bill, and they waited for several years, and that caused a critical shortening.

Another possibility—indeed I am sure this had some effect—is that the economy has been strong. When the economy is strong, companies tend to have good sales and profits—which makes it hard to prove injury. And, of course, in order to get relief from our Commission, the industry has to prove that a foreign producer is causing injury.

Senator **Hollings**. Is that too technical, the proof of injury?

Ms. **Brunsdale**. Is it too technical? No; I don't think so.

Senator **Hollings**. You don't think so?

Ms. **Brunsdale**. No.

Senator **Hollings**. You think if they can prove it under the present law and precedents, it is all right? It is not a difficult task to prove injury?

Senator **Hollings**. Good.

Ms. **Brunsdale**. I don't think so.

PRESIDENTIAL DECISIONS

Senator **Hollings**. I thought perhaps, for example, the shoe case, I hear lawyers, and even the actual entities say:

> Why go through with the International Trade Commission and take the years to field the case and win it and then have it reversed by the White House. We don't have any time for that. You just keep lawyers going in Washington. We will just go ahead and produce overseas.

That is why the development of our technology, the actual production, is going offshore. It pays to put it offshore. That is what we are finding from our standpoint. We can see that industries we have worked with saying that to Dickens with it. There is a frustration. Like in that shoe case, in 1982, it was only 50 percent imports. Now 84 percent of the shoes in this room are imported, and so that is the history and the experience.

It isn't just a few shoe jobs, as well as you think that particular industry is fundamental to your economy. That is the way we are right now with textiles and several others as they sort of drain on out and get past that 50 percent mark question where the board of directors really have to decide to go before your International Trade Commission. Then the argument on the other side of the board of directors, when they meet, "Oh, no, no use to go to that crowd. They are very good, they will listen, but once they make a decision, it will be overruled anyway, so no use wasting money on Washington lawyers and time. Let's go ahead and join them overseas."

Ms. **Brunsdale**. The cases in which the President can overrule the Commission are, mostly the 201 cases, and I might say that, in the past, the President hasn't done that very often. I can't give you the figures right now, but I would be very happy to submit them in writing.

Senator **Hollings**. Yes, ma'am, for the record. We would appreciate it.

[The information follows:]

Section 201 of the Trade Act of 1974, also known as the U.S. escape clause law, provides for the filing of petitions for import relief with the U.S. International Trade Commission. If the Commission finds, as a result of its investigation, that imports of an article are the substantial cause of serious injury or threat thereof to the domestic industry producing an article like or directly competitive with the imported article, it is to recommend the relief that would address such injury. The President, in determining whether to provide relief, takes into account different considerations. Under the law in effect prior to August 1988 (section 201 was amended at that time by the Omnibus Trade and Competitiveness Act of 1988), the President was directed to take into account certain national economic interest considerations in determining whether to provide relief and how much. Under the amendments to section 201 that became effective in August 1988, he is to provide such relief as will facilitate positive adjustment to import competition and provide greater economic social benefits than costs. Thus, the considerations taken into account by the President in determining whether to provide relief and how much are different from those taken into account by the Commission in recommending relief, and the President's decision to impose a lesser amount of relief or none at all does not necessarily represent a reversal of or disagreement with the Commission's findings and recommendations.

The Commission has conducted 61 investigations under section 201 of the Trade Act of 1974, resulting in 33 affirmative or equally divided determinations and 28 negative determinations. The President has provided import relief in the form of higher tariffs, tariff-rate quotas, orderly marketing agreements, and/or import quotas in 15 cases (in two of those cases, relief was provided under other authority). In addition, in eight cases the President directed that the Secretaries of Labor and Commerce provide expedited consideration to petitions for adjustment assistance.

ADDITIONAL COMMITTEE QUESTIONS

Senator HOLLINGS. We appreciate very much your appearance. We will hold the record open for questions by our colleagues, both for the U.S. Trade Representative and the International Trade Commission.

[The following questions were not asked at the hearing, but were submitted to the Commission for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

Question. Over the last 2 years we have supplied the Commission with the resources requested to convert the old Tariff Schedules with the Harmonized System. Why does this expand further in 1990 and when can we expect to see some leveling off in this item?

Answer. The budget activity entitled "TSUSA, Harmonized System and other nomenclature and classification activities" is a combination of several separate but interrelated responsibilities. Prior to fiscal year 1989, in addition to publishing the Tariff Schedules of the United States Annotated (TSUSA) and participating in other tariff related activities, the single most important and time consuming effort was the conversion of the TSUSA to the format of the Harmonized Commodity Description and Coding System. The conversion is essentially completed, and the effort has already leveled off. However, we expect work on the development of the Harmonized System at the international level to increase. Specifically, under the provisions of the Omnibus Trade and Competitiveness Act of 1988 (1988 Trade Act), the Commission will continue to participate in the official U.S. delegation to the Harmonized System Committee, the Scientific Subcommittee, and the various working parties of the Customs Cooperation Council (CCC). In addition, in the fall of 1989, the CCC will establish a new Review Subcommittee charged with reviewing the structured nomenclature of the Harmonized System and proposing substantive changes to reflect real trade patterns and product technology. The Commission expended 5 work-years and $510,729 directly related to conversion activities during fiscal year 1988, and has projected 3 work-years and $362,131 for fiscal year 1989 and 3 work-years and $371,827 for fiscal year 1990 related to Harmonized System "development."

The 1988 Trade Act also provides for the following new Commission activities with respect to the Harmonized System: (a) recommending changes to the HTS to reflect sustained Customs protests, to implement internationally-agreed changes to the Harmonized System, to promote uniformity, to alleviate administrative burdens, to ensure modernization, and to make technical corrections, and (b) assessing the operation of the HTS after its first year in effect. In addition, the 1988 Trade Act requires the Commission to continue maintaining and publishing the Harmonized Tariff Schedule (HTS) of the United States. As an adjunct to this function, the Commission is required to maintain and make Summary Records of the Harmonized System Committee available to the National Technical Information Service for public distribution. Furthermore, the Commission will continue to chair the Committee for Statistical Annotation of the Tariff Schedule (commonly referred to as the 484(e) Committee, after section 484(e) of the Tariff Act of 1930, which established the Committee). The Commission anticipates that the requirements in this area will increase. The Commission expended 6 work-years and $399,930 in this area in fiscal year 1988 and projects the need for 11 work-years and $795,299 in fiscal year 1989 and 13 work-years and $970,770 in fiscal year 1990.

Therefore, while the initial conversion has been essentially completed, changes to the Harmonized System, continuation of the responsibilities for maintaining and publishing the HTS, participation on various committees, and expanded responsibilities due to the Omnibus Trade and Competitiveness Act of 1988 will require a somewhat expanded effort in these areas.

Question. The ITC expects to use 38 more work-years in 1990 over the number in 1989. In your statement you state that the 1990 budget maintains Commission operations at current authorized levels. What is your basis for determining that you are entitled to 38 more work-years than you could support in 1989?

Answer. When the workload was falling in fiscal year 1986-88, hiring to fill vacancies became a less pressing priority. As the Commission has reported to you in prior years, our managers then took advantage of the lighter caseload to move slowly on hires in an effort to select the best applicants, and in some instances they have conducted multiple interviews and readvertised vacancies. As a result, the Commission vacancy rate remained high. During fiscal year 1988, the Commission caseload was at its lowest level and the Commission average on-board strength was 459.

The Commission's investigative workload is expected to increase in fiscal year 1989 and fiscal year 1990. In fact, during the first 5 months of fiscal year 1989, the Commission instituted 59 new investigations compared to 20 in the comparable period of fiscal year 1988. If this rate of growth continues, our actual caseload will substantially exceed our original projections. As the caseload has increased, our managers have started to fill vacancies and, as of today, our on-board strength is 469. The projected increase in fiscal year 1990 over fiscal year 1989 reflects our expectation that we will have most of our positions filled by the end of fiscal year 1989. The Commission is projecting a full staffing level of currently authorized positions to meet workload requirements in fiscal year 1990, and not requesting any additional positions.

Question. In your statement you say that the 1990 increase provides for two positions each for the Trade Remedy Assistance Office and the Inspector General. Late last year we approved the requested reprogramming for these offices that indicated that these four positions could be funded from currently available resources. How much do these four positions amount to and aren't they already funded?

Answer. The staffing for the Trade Remedy Assistance Office (required by the Omnibus Trade and Competitiveness Act of 1988) and Office of Inspector General (required by the Inspector General Act Amendments of 1988) will be absorbed within currently authorized resources. The Commission is not requesting additional positions or additional funding for the two new offices. What we are requesting is full funding for our 502 currently authorized positions in order to meet the demands of a rising caseload, expanded activity associated with the GATT negotiations, and implementation and operation requirements of new statutory responsibilities such as those mentioned above.

The Trade Remedy Assistance Office will be staffed by a Director and a Paralegal Assistant with total salary and benefit costs of $95,000. The Office of Inspector General will be staffed by a Director and a Staff Assistant with total salary and benefit costs of $99,000. Also, both offices will require a limited amount of service and support funding.

Question. What is the dollar impact on the Commission of the 4.1 pay increase for 1989 and how is it being absorbed?

Answer. We estimate that the January 1989 4.1 percent pay increase will cost the Commission some $697,000 in fiscal year 1989. The increase will be funded from savings that result from a lower-than-planned permanent staff level. Although the permanent staff level has begun to increase (469 as of March 11, 1989) to handle rising workload, the savings in fiscal year 1989 will be adequate to meet the pay increase requirement for that year. Now that the workload has begun to increase, the Commission is seeking to fully fund the pay raise in fiscal year 1990, in order to support the 502 full-time permanent positions that have been authorized.

Question. Last year the Commission estimated that it would spend $1,580,000 on equipment in fiscal 1988. We find that the actual amount purchased was $2,011,000, an increase of 27 percent.

What accounts for the increase over the amount budgeted?

How much of this equipment was ordered in September 1988? Please list all the September 1988 purchase orders for equipment, showing the items ordered on each one, their cost, and for what purpose it was ordered.

Why wasn't the Committee advised that the Commission had significant amounts available at year end?

Answer. In fiscal year 1988, the Commission (1) moved to its new headquarters building, and (2) purchased and installed the bulk of its agency-wide local area network (LAN)-based automated document and data sharing computer system. For these two efforts to be a success, there was a primary requirement for major equipment changes or upgrades.

Many furniture and equipment decisions could not be made until office-by-office floor designs had been completed and studied by managers; and several managers deferred equipment decisions until after their offices had moved, so that they could take operational needs into account in making their equipment selections. In addition, much of the Commission's furniture and equipment could not be transferred to the new building because of its deteriorated condition, or because it was too large to fit in the reduced office allocations. In many cases, the timing of all these factors led to furniture and equipment selection and purchase after the budget estimates had been prepared for fiscal year 1988.

The design and construction of the new building recognizes that professional office operations now occur in an automated environment. Where possible, the Commission converted to this environment by obtaining as much of its LAN-based system as possible during its relocation effort. But, as a result of the situation described above, the actual cost of equipment was higher than planned and the funds were obligated primarily during the latter half of fiscal year 1988, following the move (November 1987-January 1988) and the assessment of actual office layouts and operational requirements. Of the $2,011,000 in purchases in fiscal year 1988, $67,000 was for books for the libraries' permanent collections and $1,944,000 was for equipment. Some $392,000 of the equipment was ordered in September 1988. All of these September expenditures were planned purchases to meet existing Commission requirements. In fact, one of them, a $195,000 purchase of modular furniture, was initiated in October 1987, but the purchase order was not issued until September 1988 due to a lengthy procurement leadtime. Recognizing the extraordinary circumstances and change that occurred in fiscal year 1988, the Commission has projected a substantial reduction in its equipment budget in fiscal years 1989 and 1990, to $342,000 and $480,000, respectively.

Attached is a list of the individual purchase orders issued in September 1988, with explanatory information.

The Commission returned some $941,000 to the Treasury at the close of fiscal year 1988, representing unplanned savings resulting from a lower than projected staff level. Overall Commission workload had dropped sharply, which resulted in a curtailment of recruiting by many managers. The Committee was not advised of this formally because the savings resulted from an unplanned circumstance, and the funds were not being reprogrammed to change any office or functional activities. The Commission is satisfied that it acted responsibly in returning the savings to the Treasury, rather than reallocating them to lower, nonpriority and unplanned needs. In the first 5 months of fiscal year 1989, the Commission's overall workload has increased sharply over fiscal year 1988, and managers are filling their assigned positions to handle the work.

Description and purpose	Quantity	Cost
Office automation:		
Computer printer (Staff equipment, associated with Office Automation Replacement System (OARS))	1	$485
Optical scanner (To establish an electronic data base and convert documents to machine readable format)	1	13,340
Wheel truck (To aid movement of ADP equipment and supplies throughout the Commission)	1	509
Computers (Staff equipment, associated with OARS project)	3	8,163
LAN file servers (Installation of the Commission's OARS)	1	24,098
Mini computer sys. components (Operation of a minicomputer implementing a legal research system)	1	16,415
Kodak audio visual equipment (Instructional aid for group orientations, Commission hearings and staff training)	1	1,270
LAN file servers (Installation of the Commission's OARS)	1	24,773
Computer terminal w/printer (Staff equipment, associated with OARS project)	2	2,150
LAN system equipment (Related information systems equipment to include LAN's and PC's associated with OARS)	1	4,616
Subtotal		95,819

Description and purpose	Quantity	Cost
Other equipment:		
Remarkable board w/stand (Presentation aid for use at group orientations, Commission hearings and staff training)	1	517
Glass tops for conference tbls (To protect tables in hearing and court rooms)	102	7,328
Hearing rooms sound system (Improvement to public hearing room sound system)	1	650
Shelf conversion kits (Display shelves for public documents)	4	56
File cabinets (Maintenance of Commission files)	6	1,554
Storage cabinets (Maintenance of Commission files)	3	2,215
File cabinet (Maintenance of Commission files)	1	340
Microform equipment (Maintenance and availability of Commission files)	1	600
Literature racks (Display shelves in first corridor for documents available to the public)	7	769
Wall file (Display shelves for public documents)	1	93
Platform trucks (To reduce noise levels in corridors during hearings when moving supplies and materials)	3	840
Subtotal		14,962
Telecommunications equipment:		
Facsimile machine (To exchange information more efficiently during investigations, and with State Department, USTR, and other government agencies)	1	2,495
Do	1	2,590
Telephones (To take advantage of new telecommunications wiring in new building)	18	3,526
Subtotal		8,611
Modular workstations:		
Modular furniture installation (Complete procurement of furniture for the Office of Industries staff initiated at the beginning of the fiscal year)		19,850
Chairs	60	24,900
Modular furniture		40,232
Chairs	46	16,059
Modular furniture		87,870
Do		6,430
Subtotal		195,341
Other furniture:		
Chairs (To meet furniture needs of staff throughout the Commission)	10	3,690
Chair	1	306
Secretarial workstation	1	801
Workstation	1	1,106
Chairs	2	261
Desk and credenza	2	1,206
Credenza	1	1,559
Chairs (2), table (1) and files (4)	7	1,784
Chairs	4	737
Printer table	1	174
Chair	1	350
Chairs	2	358
Computer table	4	1,226
Desk	1	281
Chairs	2	886
Table	1	294
Do	1	266
Chairs	3	1,819
Chair	1	690
Bookcases (3) and file cab (1)	4	1,183
Credenza (1) and bookcases (4)	5	1,410
Credenza	1	478
Chairs and computer stand	8	2,835
Lectern and stool	2	694
Desk	1	3,758
Bookcase and two cabinets	3	568
Bookcase	1	237
Chair	1	325

Description and purpose	Quantity	Cost
Subtotal		29,282
Graphics equipment:		
Report binding equipment (Implementation of wrap around binding capability to prepare Commission reports more efficiently and economically and to replace an old malfunctioning paper cutter)	1	16,672
Camera equipment system	1	13,891
Paper cutter	1	14,520
Image scanner	1	2,995
Subtotal		48,078
Total		392,093

Questions Submitted by Senator Brock Adams

Question. In your budget submission you state that the ITC expects as many as 300 steel industry antidumping and countervailing duty cases to be filed with the expiration of the steel VRA's. Last year, the U.S. domestic steel industry had $1 billion in profits and this is expected to increase to $2 billion this year. Given these profits, how likely will it be that the steel industry will be able to demonstrate material injury, or a threat of material injury, from steel imports?

Answer. First, while my budget statement said the filing of 300 dumping and countervailing duty cases was widely anticipated, I personally am not prepared to forecast that event.

Second, I cannot predict the likelihood that the steel industry would be able to demonstrate material injury or threat of material injury by reason of unfairly traded steel imports in any Title VII cases that may be filed. It would, of course, be inappropriate to prejudge any case. But I can briefly describe the process and the issues that the Commission would consider. As you know, there are a number of criteria spelled out in the governing statute for assessing injury. While it may be true that increases in profitability, employment, and production make it more difficult for industries to prevail in Commission investigations, other specified criteria, such as the volume of imports and any price suppressing or depressing effects they may have, may well play an important role in a Commission determination.

In addition, the statute provides that even if the Commission is unable to find current injury to an industry by reason of unfairly traded imports, it must consider the question of threat of material injury. Factors other than the current condition of an industry may be of substantially more importance in evaluating threat of injury than in evaluating present injury. Some of those factors (which are enumerated in section 771(7)(F) of the Tariff Act of 1930 [19 U.S.C. Sec. 1671(7)(F)]) are whether any subsidies found by Commerce are export subsidies, whether foreign producers have unused production capacity, whether there is a probability that imports will enter the United States at prices that will have a depressing or suppressing effect on prices of domestic merchandise, and whether there is a likelihood that import volumes will increase to injurious levels. Newspaper reports on the plans of the steel industry indicate a possibility they will file cases claiming only the threat of injury because of concerns over the difficulty of demonstrating actual injury.

Question. When will the ITC complete its study of the western steel market and the economic effects that the voluntary restraint agreement on steel has had on that market. Can you make any tentative comments on its conclusion?

Answer. The Commission's study of the western U.S. steel market and analysis of the effects of the VRA's on producers and consumers located in that region is due to be completed and submitted to the Committee on Ways and Means by March 31, 1989. In the study, the Commission is analyzing a number of key issues, including:

Structural changes that have occurred in the western steel industry in recent years;

Consumption of steel products in the region;

Patterns of supply to the region (i.e., the respective roles of imports, western production, and non-regional U.S. production);

Factors limiting the use of domestically produced steel manufactured in facilities located outside the region;

Factors affecting the importation cost of steel;

Issues relating to imports from countries not subject to voluntary restraint agreements (VRA's);

The effects of the VRA's on producers and consumers located in the western region; and

The implications of continuation of the VRA's on producers and consumers located in the West.

The Commission developed information used in the study from a number of sources, including questionnaires sent to producers and consumers, fieldwork, other studies done on the steel industry, and a public hearing held in Washington on October 25, 1988.

The final report is currently under review by the Commission, and is scheduled to be submitted to the Committee on Ways and Means by March 31. In view of this, it would be premature for me to make any tentative comments on the results of the study. Please be assured that we will forward a copy to you as soon as possible, and stand ready to answer any questions you may have on the study results.

QUESTIONS SUBMITTED BY SENATOR FRANK R. LAUTENBERG

Question. Has there been increased utilization of section 337 by the intellectual property owners since enactment of the 1988 Amendments? Please provide details.

Answer. The Commission began experiencing an increase in section 337 filings in November 1988, approximately 3 months after enactment of the 1988 Amendments. Between late November 1988 and March 10, 1989, 11 complaints were filed under section 337. The number of section 337 complaints filed during this 3½ period equals the total number of section 337 investigations instituted during 1988.

Question. Is there any indication that smaller firms will be taking advantage of section 337? Please provide details.

Answer. To date, there has been no increase in section 337 filings by smaller firms. Since enactment of the 1988 Amendments, ITC's Trade Remedy Assistance Office (formerly the Trade Remedy Assistance Center) at the Commission has seen increased interest on the part of smaller firms in antidumping and countervailing duty investigations, but not in section 337 investigations. Since adoption of the amendments, only two firms interested in pursuing section 337 relief have sought to be certified as eligible small businesses in order to receive technical assistance from the Trade Remedy Assistance Office. Neither of these firms has yet filed a section 337 complaint.

Question. What implications has the amendment of 337 had on staffing needs and the work of the Commission generally? Please provide details.

Answer. As I have indicated above, the Commission began experiencing an increase in section 337 filings in November 1988, approximately 3 months after enactment of the 1988 amendments. At present, we anticipate that the Commission can handle the increase in section 337 filings with its currently projected staffing levels.

Question. Please provide a report on the status of implementation of section 337 as amended.

Answer. To implement the various amendments to section 337, the Commission has substantially revised its rules relating to section 337 investigations, including the elimination of the injury requirement in most cases and changes in temporary relief and default procedures. With the exception of rules relating to the posting of bonds in temporary relief proceedings, the Commission adopted a comprehensive set of interim rules governing the conduct of section 337 investigations and enforcement proceedings on August 23, 1988, the date the 1988 amendments to section 337 went into effect. The Commission adopted rules regarding temporary relief bonding procedures on November 21, 1988. The Commission does not contemplate converting these interim rules to final rules until it has had a substantial amount of practical experience with the statutory amendments and the operation of the new rules.

In addition to revisions of Commission rules, notices of investigation in section 337 investigations pending at the time of enactment of the amendments have been amended to conform to the amendments. With regard to the new seizure and forfeiture provision in the amendments aimed at eliminating port shopping by importers of excluded goods, the Commission is working with the Customs Service to coordinate issuance of notifications and seizure orders.

Question. Please provide a list of all cases filed under section 337 since adoption of the amendments, a short description of the cases, and their disposition.

Answer. Twelve section 337 complaints have been filed since enactment of the 1988 Amendments on August 23, 1988. As detailed below, the Commission has instituted investigations based on eight of these complaints and voted against institution in one instance. One complaint is now awaiting a vote on institution, consideration of another complaint has been suspended, and one complaint was withdrawn prior to a Commission vote on institution.

Strip Lights, Inv. No. 337-TA-287, filed August 24, 1988.—This investigation was instituted on September 20, 1988, and involves allegations of patent infringement and registered trademark infringement in the importation and sale of certain strip lighting products from Taiwan. The complainant recently moved to eliminate additional allegations of false advertising and trade dress infringement from the investigation. Discovery is proceeding.

Straight Knife Cloth Cutting Machines, Inv. No. 337-TA-288, filed November 23, 1988.—This investigation was instituted on December 22, 1988, and involves allegations of patent infringement in the importation and sale of certain cloth cutting machines from Taiwan. Discovery is proceeding.

Concealed Cabinet Hinges and Mounting Plates, Inv. No. 337-TA-289, filed November 23, 1988.—This investigation was instituted on December 22, 1988, and involves allegations of patent infringement in the importation and sale of certain cabinet hinges and mounting plates from Italy, Korea and Taiwan. Discovery is proceeding.

Wire Electrical Discharge Machining Apparatus and Components Thereof, Inv. No. 337-TA-290, filed January 23, 1989.—This investigation was instituted on February 22, 1989, and involves allegations of patent infringement in the importation and sale of certain wire electrical discharge machining apparatus, which are used to cut through work pieces by means of high frequency electric discharges, from Japan. Discovery is proceeding.

Insulated Security Chests, Inv. No. 337-TA-291, filed January 25, 1989.—This investigation was instituted on February 22, 1989, and involves allegations of patent infringement in the importation and sale of certain portable fireproof security chests from Taiwan. Discovery is proceeding.

Carbonated Candy Products, Inv. No. 337-TA-292, filed January 31, 1989.—This investigation was instituted on February 22, 1989, and involves allegations of process patent infringement in the importation and sale of certain carbonated candy from Spain. Discovery is proceeding.

Crystalline Cefadroxil Monohydrate, Inv. No. 337-TA-292, filed February 1, 1989.—This investigation was instituted on March 8, 1989, and involves allegations of patent infringement in the importation and sale of cefadroxil monohydrate, an antibiotic, from Italy, Spain and Switzerland. The complaint was accompanied by the first request for temporary relief since adoption of the 1988 Amendments. The complainant and temporary relief request have been forwarded to an Administrative Law Judge and discovery will commence shortly.

Carrier Materials Bearing Thermally Transferable Ink Compositions Used in a Process for Dry Adhesive-free Thermal Transfer of Said Ink Compositions, complaint filed February 14, 1989.—This investigation was instituted on March 15, 1989. The complaint involves allegations of patent infringement in the importation and sale of certain ink compositions from Canada.

Novelty Teleidoscopes, complaint filed March 9, 1989.—The Commission is scheduled to vote on institution of an investigation based on this complaint on April 4, 1989. The complaint involves allegations of common law trademark infringement, false designation, passing off and common law unfair competition in the importation and sale of certain novelty optical devices, teleidoscopes, from Hong Kong and Taiwan.

Recombinant Erythropoietin, complaint filed February 3, 1989.—This complaint involves allegations of unfair competition in the importation and sale of a genetically engineered drug, erythropoietin, from Japan. The Commission has delayed the vote on institution of an investigation based on this complaint until 30 days after it reaches a decision in another investigation, *Recombinant Erythronoietin*, Inv. No. 337-TA-281, involving the same product and same respondents, which is presently under review by the Commission following an initial determination of no violation by an Administrative Law Judge. The Commission has delayed consideration of the complaint because most of the facts alleged are currently under investigation in the pending investigation, and the Commission's final determination in that investigation may have a bearing on whether a second investigation should be instituted.

Grain-oriented Silicon Steel, complaint filed December 7, 1989.—This complaint involved allegations of process patent infringement relating to certain grain oriented silicon steel from Japan. On January 4, 1989, the Commission unanimously voted against institution of a section 337 investigation based on this complaint because of the absence of a domestic industry with respect to the asserted patent.

Finally, a patent-based complaint involving artificial breast prostheses, filed December 5, 1988, was withdrawn by the complainant prior to the Commission's vote on institution.

Question. What impact, if any, has the recent GATT panel report on section 337 had on the Commission's handling of 337 cases?

Answer. The report has had no impact on the Commission's handling of section 337 complaints or investigations.

SUBCOMMITTEE RECESS

Senator HOLLINGS. The subcommittee will be in recess until Thursday, March 16, at 10 o'clock. We will hear the request of the FBI and the Drug Enforcement Administration. Thank you both very, very much.

Ms. BRUNSDALE Thank you, Senator.

[Whereupon, at 10:47 a.m., Tuesday, March 7, the subcommittee was recessed, to reconvene at 10 a.m., Thursday, March 16.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1990

THURSDAY, MARCH 16, 1989

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10:08 a.m., in room S-146, the Capitol, Hon. Ernest F. Hollings (chairman) presiding.

Present: Senators Hollings, Rudman, Hatfield, Kasten, and Gramm.

DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

STATEMENT OF WILLIAM S. SESSIONS, DIRECTOR

ACCOMPANIED BY:

JOHN G. GLOVER, EXECUTIVE ASSISTANT DIRECTOR OF ADMINISTRATION

FLOYD I. CLARKE, ASSISTANT DIRECTOR, CRIMINAL INVESTIGATIVE DIVISION

JAY A. BRIXEY, DEPUTY ASSISTANT DIRECTOR, FINANCIAL MANAGEMENT BRANCH

HARRY H. FLICKENGER, ASSISTANT ATTORNEY GENERAL FOR ADMINISTRATION

MICHAEL J. ROPER, DEPUTY ASSISTANT ATTORNEY GENERAL, CONTROLLER

ADRIAN A. CURTIS, DIRECTOR, BUDGET STAFF

OPENING REMARKS OF SENATOR HOLLINGS

Senator HOLLINGS. Good morning. Today we continue our Department of Justice hearings with the Federal Bureau of Investigation and the Drug Enforcement Administration. First, we will hear from the FBI and welcome the Director, Judge William S. Sessions and his associates. The FBI is requesting $1,505,846,000 for fiscal year 1990, an increase of $67 million or 4 percent more than the 1989 enacted level.

However, when we include the reimbursable positions resulting from the $51,589,000 transferred to the Organized Crime Drug Enforcement Program, the increase is roughly $118.6 million or 8 percent more than last year.

I understand the program increases, Judge, are principally to maintain the ongoing initiatives to provide FBI agents with sophisticated, high technology equipment.

I look forward to your statement highlighting your program increases as well as any unmet needs which could weaken the FBI's ability to enforce our Nation's laws. But first, I will yield to our ranking member.

Senator RUDMAN. Thank you, Mr. Chairman. I have no opening statement. I am looking forward to hearing from the Director, and I will have questions later on.

Senator HOLLINGS. Good. Senator Gramm?

Senator GRAMM. Well, Mr. Chairman, let me say I am glad to be here. There are few, if any, more important activities that we appropriate money for than the FBI and the DEA. Last year, we were fortunate under the leadership of our dear friend Senator Rudman to adopt a drug bill which provided some supplemental money.

But one of the things that concerned me in the debate last year is that while we did provide an increase in year over year for funding for both the FBI and the DEA, in both cases, even after the supplemental drug bill added money for both agencies, we ended up providing less money than the President requested. I think it is vitally important that we set high priorities on the FBI and the DEA. I strongly support their budget request, and I hope that we can find room, even in a very tight budget, Mr. Chairman, to fully fund the FBI and the DEA.

Senator HOLLINGS. Very good.

Judge Sessions.

OVERVIEW OF THE FBI'S 1990 REQUEST

Mr. SESSIONS. Thank you. It is a pleasure to be here again, Mr. Chairman, to present the FBI's budget request for fiscal year 1990. I come before you today certain in the knowledge that the budget request for fiscal year 1990 is the minimum required by the FBI to discharge its duty. I am equally certain that in the view of ever increasing and increasingly difficult responsibilities levied upon the FBI, an appropriation in any amount less than what is requested will have a serious adverse impact on our ability to perform successfully.

The increases requested in the fiscal year 1990 budget are modest and are funded to a degree by offsetting reductions in base programs. These increases should be examined in the context of the entire budget request. I am keenly aware of the need for fiscal restraint, and I can assure you that this concern has led to a most careful analysis of our activities and our requirements.

Upon close examination, I believe you will agree that the requests advanced in the FBI's fiscal year 1990 budget are absolutely necessary for the accomplishment of the FBI's multifaceted missions.

For fiscal year 1990, we are requesting a total of $1.5 billion in direct funding and 21,634 positions. In addition, as you noted, $51.6 million in reimbursable resources are anticipated from the organized crime drug enforcement appropriation. The OCDE resources which were included within the FBI appropriation in 1989 are to be transferred to the new appropriation pursuant to the Anti-Drug Abuse Act of 1988.

In the aggregate, the resources directly appropriated or otherwise available to the FBI through reimbursement would be $1.56 billion or an increase of $118 million over the 1989 appropriated level.

The requested level of direct funding is actually $66.7 million or 4.6 percent above the 1989 appropriation, as you noted. However, adjustments to the base totaling $42.5 million are necessary. These adjustments include an increase in mandatory operating expenses totaling $94.2 million. This increase includes $12.2 million representing the annualization of resources appropriated under the Anti-Drug Abuse Act of 1988. Base adjustments also include other uncontrollable increases of $82 million in operating expenses, such as the 4.1-percent pay raise for fiscal year 1989, rent, telephone service, and other inflationary increases. If we are to maintain the current level of operations, it is essential that we receive these mandatory increases.

PROGRAM INCREASES

The FBI's 1990 budget includes net program increases of $24.2 million or 1.6 percent over the 1990 base and a program decrease of 150 permanent positions and 198 support work-years.

The program enhancements we are requesting represent resources to continue certain initiatives which the Congress has supported in the past. An analysis of the FBI's activities discloses an increasing reliance on technology in our investigative and administrative operations. In our investigative operations, we are being forced to rely more heavily upon evidence obtained by technical means, because in many cases, this is the only way to develop probative evidence. This is true in all types of investigations.

Our awareness of this trend is reflected in our request for a net increase of $5.35 million, 57 positions, and 29 work-years in connection with our Technical Field Support and Equipment Program. This increase includes a request for funding for electronic surveillance equipment to support the use of court ordered and consensual monitoring with transmitters, body recorders, and pen registers. In addition, this request includes additional funding for the lease of radio antenna tower and microwave repeater sites to support the expansion of the digital voice privacy network, the purpose of which is to prevent the compromise and defeat of ongoing investigative operations. The importance of having reliable equipment and secure communications cannot be overstated when we are placing our agents in dangerous, often life-threatening situations in an effort to meet the exacting standards of evidence required of us.

The requested increase in the Technical Field Support and Equipment Program is funded, in part, by a program decrease in funding for digital voice privacy radio equipment. As a result of this decrease, the FBI will defer procurement of a portion of this type of radio equipment.

Furthermore, the FBI has, for some time, been in the process of automating certain functions in our field offices and developing an artificial intelligence capability to improve efficiency in complex investigations. Our continuing commitment to these important projects is demonstrated in the request for a net increase of $6.6 million, 40 positions, and 20 work-years in connection with the Automated Data Processing and Telecommunications Program.

Included within the requested increase is an enhancement to continue initiatives related to the development of expert systems, in particular, the counterterrorism expert system and the labor racketeering expert system. The requested funding would allow for implementation of each of these systems in three additional field offices.

The positions and work-years requested in both of these programs are for electronics technicians who are needed to install, service, or maintain equipment which supports investigative operations or telecommunications. These personnel increases are more than offset by a reduction of 247 positions and 247 work-years taken in anticipation of economies to be derived from privatization of certain support functions to be studied pursuant to the Office of Management and Budget Circular A-76.

The FBI is also requesting $14.3 million for various general and technical equipment categories and research and development in connection with our programs captioned "Other field programs". This enhancement is necessary to provide adequate inventories of equipment to field investigative and special support personnel and to maintain, repair, and replace existing equipment as needed. General and technical equipment are essential for the effective utilization of sophisticated investigative techniques such as physical surveillance, pen registers, title III, and other electronic surveillance and undercover operations.

The targets of FBI investigations are becoming increasingly capable in their application of high technology in their own unlawful activities. Their greater utilization of increasingly sophisticated technical aids for their activities and for countermeasures against law enforcement efforts requires a greater dedication of resources to FBI research and development. This increased dedication of resources is necessary if the FBI is to maintain the technical edge over its targets.

FINANCIAL INSTITUTIONAL FRAUD

Mr. Chairman, in the past weeks and months, much attention has been given to the problems we are experiencing in our financial institutions. The alarming number of failures of banks and savings and loan associations is of particular concern because of their destabilizing effect on the economy. This is especially true when the failure of a bank or a savings and loan is caused, in whole or in part, by fraudulent activity on the part of people in positions of trust.

As a part of the administration's initiative to combat fraud in financial institutions, the President announced a 3-year program to enhance investigative and prosecutorial resources in the Department of Justice. For the FBI portion of this initiative, the President will be submitting a 1989 supplemental appropriation request and a budget amendment to the pending 1990 budget request.

These requests would provide the FBI with $23 million in budget authority in 1989 and would amend the 1990 request by $25 million. These resources would permit the FBI to hire 236 new special agents and 218 new clerical and professional support employees, nearly one-half of whom would be accounting technicians.

At present, there are a number of cases requiring immediate investigation because of the imminent lapse of the statute of limitations. Given the urgency, we would like to implement this initiative as quickly as possible. In order to do so, we would need to transfer some experienced agents to those areas with the most acute problems and begin hiring new investigative and support personnel immediately.

Mr. Chairman, I ask for and I need your support for the requested 1990 budget for the FBI as well as for the proposed 1989 supplemental and 1990 budget amendment.

PREPARED STATEMENT

This concludes my prepared remarks. Of course, I will be more than happy to respond to any questions that you may have regarding the 1990 budget request or other matters of concern to the subcommittee, sir. Thank you.

[The statement follows:]

STATEMENT OF WILLIAM S. SESSIONS

Mr. Chairman, members of the subcommittee, it is once again my pleasure to appear before you to present the FBI's budget request for fiscal year 1990. I come before you today certain in the knowledge that the budget request for fiscal year 1990 is the minimum required for the FBI to discharge its duty.

I am equally certain that in view of the ever increasing, and increasingly difficult, responsibilities levied upon the FBI, appropriation of any amount less than what is requested will have a serious adverse impact on our ability to perform successfully. The increases requested in the fiscal year 1990 budget are modest and are funded to a degree by offsetting reductions in base programs. These increases should be examined in the context of the entire budget request. I am keenly aware of the need for fiscal restraint, and I can assure you that this concern has led to a most careful analysis of our activities and requirements.

Upon close examination, I believe you will agree that the requests advanced in the FBI's fiscal year 1990 budget are absolutely necessary for the accomplishment of the FBI's multi-faceted missions.

For fiscal year 1990, we are requesting a total of $1.5 billion in direct funding and 21,634 permanent positions. In addition, $51.6 million in reimbursable resources are anticipated from the organized crime drug enforcement (OCDE) appropriation. The OCDE resources were included within the FBI appropriation in 1989 but were transferred to the new appropriation pursuant to the Anti-Drug Abuse Act of 1988.

In the aggregate the resources directly appropriated or otherwise available to the FBI through reimbursement would be $1.55 billion or an increase of $118 million over the 1989 appropriated level. The requested level of direct funding is actually $66.4 million or 4.6 percent above the 1989 appropriation; however, adjustments to the base totaling $42.5 million are necessary. These adjustments include an increase in mandatory operating expenses totaling $94.2 million. This increase includes $12.2 million, representing the annualization of resources appropriated under the Anti-Drug Abuse Act of 1988. Base adjustments also include other uncontrollable increases of $82 million in operating expenses, such as the 4.1 percent pay raise for fiscal year 1989, rent, telephone service, and other inflationary increases. If we are to maintain the current level of operations, it is essential that we receive these mandatory increases.

The FBI's 1990 budget includes net program increases of $24.2 million, or 1.6 percent over the 1990 base, and a program decrease of 150 permanent positions and 198 support work-years. The program enhancements we are requesting represent resources to continue certain initiatives which the Congress has supported in the past.

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Mr. Chairman, in the past weeks and months much attention has been given to the problems we are experiencing in our financial institutions. The alarming number of failures of banks and savings and loan associations is of particular concern because of their destabilizing effect on the economy. This is especially true when the failure of a bank or savings and loan is caused, in whole or in part, by fraudulent activity on the part of people in positions of trust.

As part of the administration's initiative to combat fraud in financial institutions, the president announced a 3-year program to enhance investigative and prosecutorial resources in the Department of Justice. For the FBI portion of this initiative, the President will be submitting a 1989 supplemental appropriation request and a budget amendment to the pending 1990 budget request. These requests would provide the FBI with $23.0 million in new budget authority in 1989 and would amend the 1990 request by $25 million. These resources would permit the FBI to hire 236 new special agents and 218 new clerical and professional support employees, nearly half of whom would be accounting technicians.

At present there are a number of cases requiring immediate investigation because of the imminent lapse of the statute of limitations. Given the urgency, we would like to implement this initiative as quickly as possible. In order to do so, we would need to transfer some experienced agents to those areas with the most acute problems and begin hiring new investigative and support personnel immediately.

Mr. Chairman, I ask for, and I need, your support for the requested 1990 budget for the FBI, as well as for the proposed 1989 supplemental and 1990 budget amendment. This concludes my prepared remarks. I would be more than happy to respond to any questions you may have regarding our 1990 budget request or any other matter of concern to this subcommittee.

SAVINGS AND LOAN INVESTIGATIONS

Senator HOLLINGS. Judge, when did the FBI receive its first request to investigate savings and loan fraud or misdeeds?

Mr. SESSIONS. We have investigated savings and loan fraud over the years, Senator, but of course, as to the major push in connection with the financial institution fraud initiative, I do not recall precisely, but it would have been about the time of the President's message.

Senator HOLLINGS. About the time of the President's message. Until that time, I mean, there was no big thrust over there or a lot of cases reported by other organizations, as you recall?

Mr. SESSIONS. There was a steady flow of investigative resources placed in that particular area.

Senator HOLLINGS. I am not talking about resources; I am talking about a request by other agencies, Department of Treasury, FSLIC, FDIC; did they make any requests?

Mr. SESSIONS. We had about 350 cases pending at that time in connection with those institutions, both banks and savings and loans, but I do not recall that there was a specific request.

Mr. Clarke is here, and he may know if there was a specific request.

Mr. Clarke, do you know of that?

Mr. CLARKE. Yes; we have been involved in bank failures for a number of years. This goes back to about 1980 or 1982, when there was a concerted effort in Oklahoma City. Following that, there was a task force operation in Tennessee dealing with a series of bank failures.

Over the last 2 years, we have had two major efforts in the Texas area dealing with bank failures. So, we have had a number of ongoing efforts to deal with the bank failures over the last 4 or 5 years.

Senator HOLLINGS. The supplemental that was just sent up for the FBI included no additional personnel for S&L investigations, as I understand it.

Mr. SESSIONS. The financial institution fraud initiative will provide 236 special agents and the 118 support people will be placed in that area in 1989. That is the intention.

Senator HOLLINGS. Yet, there was no money requested for the FBI, period, in that supplemental that was sent up Monday.

Mr. CLARKE. I think that is right.

Senator HOLLINGS. The administration has made a supplemental request. I think you ought to know that.

Mr. SESSIONS. Mr. Brixey indicates that that is a separate one; that we are not included in, that is correct.

On March 10, 1989, the President submitted two amendments requesting additional appropriations for the Drug Enforcement Administration and for the Office of Justice Program—House Document 101-36. Although the intent to transmit both supplementals and amendments to respond to fraud in financial institutions was known several weeks before the hearing, no official documentation had been transmitted from the President to the Congress at the time of the hearing.

BACKGROUND INVESTIGATIONS

Senator **Hollings**. Now on to another matter. Senator Rudman and I had a previous meeting with Attorney General Thornburgh on the matter of FBI background investigations and the exact relationship of the Bureau with the White House and with the U.S. Senate and Congress. Although I have asked the Bureau to describe their role in background investigations and received a memo in this regard, can you just walk us through what the actual background or a typical background investigation involves? Maybe Mr. Clarke can do that?

Mr. **Sessions**. I will be pleased to comment in connection with the specific investigations that you have questions about, as to the general and overall background investigation procedure.

Senator **Hollings**. Yes, sir; that is what I would like.

Mr. **Sessions**. As you know, with those investigations, we operate under a memorandum of understanding with whatever client it is so that the memorandum of understanding provides for how we will supply and when we will supply the information to them.

Senator **Hollings**. When you use the word "client", are you the client of the White House, or is the White House your client?

Mr. **Sessions**. Whoever is the client, the client is the one we serve.

Senator **Hollings**. I see. Right.

Mr. **Sessions**. And the one to whom we provide the information. So in those cases where the White House is, in fact, the client, then the information flows directly to the White House, and thereafter, determine what portions of the results of the background investigation they will share and how they will share it.

The Bureau does not do anything outside of that agreement. The agreement was entered into, in this instance, in this administration, by Attorney General Thornburgh and at the time, President-elect Bush. That procedure has been followed.

Senator **Hollings**. Does at any time the FBI become the client of the U.S. Senate or the U.S. Senate become the client of the FBI? Either way, I am confused as to the way you categorize it.

Mr. **Sessions**. No, sir; I would not think that you would become the client under that memorandum of understanding——

Senator **Hollings**. Not under that memorandum; at any time irrespective of the memorandum. If we happen to say, "Let's look at the FBI report," I am wondering what your relationship is to the U.S. Senate.

Mr. **Sessions**. The gaining of information by the U.S. Senate would flow from the agreements that you entered into, if any, with the White House in connection with that particular background investigation. We would have provided all of it straight to the White House, and thereafter, it would flow in whatever agreement you had with the White House on your gaining of information from our report.

Senator HOLLINGS. And the flow would never be direct to the U.S. Senate itself?

Mr. SESSIONS. I do not expect it would. No, sir.

Senator RUDMAN. Because we are the legislative branch and you are going to deal in that relationship with the executive branch.

Mr. SESSIONS. That is correct.

Senator RUDMAN. Would you yield for a moment?

Senator HOLLINGS. Sure.

Senator RUDMAN. This is a very interesting question that the chairman raises.

Senator HOLLINGS. Yes; go ahead.

Senator RUDMAN. I thank the chairman very much for exploring this, because I read the memorandum entitled "FBI's Special Inquiry Investigations," acronym SPIN. I don't see that there is anything classified about this.

Senator HOLLINGS. Nothing classified. We will put it in the record.

[The information follows:]

ISSUE: FBI SPECIAL INQUIRY (SPIN) INVESTIGATIONS

SCOPE AND NATURE OF SPIN INVESTIGATIONS

Special Inquiry (SPIN) is a term used by the FBI to characterize background investigations conducted by the FBI for the White House, the National Security Council and several select Congressional committees.

PURPOSE OF SPIN INVESTIGATIONS

The goal of SPIN investigations conducted for the White House is to provide White House officials with accurate and complete information concerning the character, loyalty, reputation and associates of a potential appointee, a White House staff member, or other individuals requiring frequent access to the White House. The scope of the SPIN process and the manner in which it is reported are intended to meet the needs of the president and his staff in nomination, employment and access decisions, as well as to assist in security clearance determinations.

SPIN investigations do not, with the exception of some cases involving the judiciary, focus upon an individual's substantive ability in the area of the prospective appointment. While the FBI does check credit records to ascertain an appointee's financial responsibility, the FBI has not been tasked with conducting inquiries into financial matters (e.g., a nominee's investments or other sources of income, or sources of loans). The FBI merely asks knowledgeable persons whether an appointee lives beyond his/her financial means.

Financial statements of appointees are reviewed by White House personnel and are not provided to the FBI. In addition, IRS records are provided directly to the White House and are not furnished to the FBI. If allegations of improprieties relating to financial matters are developed through other inquiries conducted during the SPIN process, or are brought to the FBI's attention by the White House, the FBI undertakes the investigation necessary to resolve them.

It is important to note that the FBI's investigation is not the only basis upon which the White House makes decisions regarding nominations or filling staff vacancies. Other information is used by the White House in making these decisions including personal interviews, questionnaires concerning personal and financial data, Internal Revenue Service record checks, and name checks.

INVESTIGATIVE PROCESS

Requests for SPIN investigations are handcarried from the White House to the FBI, along with Standard Form 86, Questionnaire for Sensitive Position, a supplementary list of 10 "issue" type questions, the individuals fingerprints and the release necessary for access to educational, occupational, credit and other records.

This data is carefully reviewed in the SPIN Unit of the Special Inquiry and Civil Rights Section in the Criminal Investigative Division. The SPIN Unit is responsible for the overall field-wide coordination and administration of these investigations. Checks of FBI records systems, and indices including fingerprint files, at headquarters and in field offices are routinely performed. If no previous background investigation has been conducted concerning the appointee, a full-field investigation is initiated which covers the full extent of the appointee's adult life from high school to the present. Assignments are sent by teletype and facsimile to the FBI field offices covering the appointee's place of birth, places of residence, education and employment, and to offices such as Saint Louis where military personnel records are checked if the appointee served in the military.

Because of their sensitivity, SPIN cases conducted for the White House require the most comprehensive investigation to assure that if derogatory information exists, it is developed fully and resolved whenever possible. This standard of complete thoroughness in SPIN matters is absolutely essential to best serve the President in the nomination process and to assure that the nominee's character is not impugned by spurious information, rumor or innuendo.

As a general rule, a minimum of 35 persons, who can knowledgeably comment on a Presidential appointee's background, are interviewed. About 20 persons are usually interviewed in White House staff cases. These interviews typically include references, associates, colleagues, neighbors, business competitors, and others who can comment on the appointee's loyalty, character and reputation. When allegations or any derogatory information are developed, all logical additional investigation is conducted to resolve the issue and may require locating numerous additional persons who can provide more information regarding the specifics of the particular allegation.

Among the issues explored in SPIN investigations are the following:

a. personal and business credit issues

b. civil suits as a plaintiff or defendant, including divorces

c. any removals/dismissals of employment

d. any contact with representatives of foreign countries

e. any details of applicant's personal life that could be used to coerce the applicant

f. any professional grievances

g. business/investment circumstances involving a possible conflict of interest

h. details of any psychological counseling

i. prescription drug, alcohol abuse, or illegal drug use

j. membership in organizations whose policies restrict membership on the basis of sex, race, creed, color, religion, or national origin

k. criminal history

I. "lifestyle" issues i.e homosexuality, wife abuse, etc.

Results of SPIN investigations are reported to FBIHQ by teletypes and reports which are then summarized in memorandum form in the SPIN Unit. This summary memoranda is provided to the White House. Derogatory information, if developed, is included in the summary and is attributed to the person or persons who provided the information. If these persons request confidentiality, their identities are concealed but the White House is provided information concerning the individual's association with the appointee and the basis of the individual's knowledge of the derogatory information so that the White House can properly assess the significance and pertinence of the information. Complete texts of such interviews, with the identities concealed where appropriate, are also provided to the White House along with the summary or are incorporated into the text of the summary.

INVESTIGATIVE DEADLINES VS. TIMELINESS

By mutual agreement between the White House and the FBI, flexible timeframes for the completion of the background investigation by the FBI have been established, dependent on the nature and priority of the particular position.

Presidential Appointment with Senate Confirmation (PAS) or presidential Appointment—25 calendar days.

White House staff or access—35 calendar days.

On board staff or access (5 year update)—75 calendar days.

Limited inquiry or expanded name check—10 calendar days.

These deadlines are flexible, depending on circumstances and can be shortened by White House upon request. For example, full-field investigations on Cabinet-level appointees have been conducted in as short as 5 working days but have averaged approximately 20–22 days, for completion during the Bush Administration to date.

While timeliness is a major concern, it cannot be allowed to foreshadow the primary importance of thoroughness. Failure to conduct a comprehensive investigation can compromise the integrity of the entire appointment process and erode both political and public trust in the FBI and the President.

Short deadlines often have an adverse impact upon the quality of investigations, although the distinctions in quality may be subtle. For example, interviews that are normally conducted in person may be done by telephone under exceptional circumstances. However, a person so interviewed is less likely to be candid. Leads which will probably be unproductive, but may possibly open new avenues of investigation, are less likely to be pursued.

ROLE OF THE FBI IN THE APPOINTMENT PROCESS

While there has been some question as to the responsibility of the FBI to the Senate regarding SPIN investigations conducted for the White House, precedent and custom have clearly defined the FBI's role in the appointment process. That role has been to provide the President, through the White House Counsel's Office, with accurate and complete information concerning a nominee's character, loyalty, reputation and associates so that the President can make informed nomination decisions.

It is essential that the FBI's role be preserved as an impartial, nonpartisan investigative agency. This is best accomplished when the FBI provides the results of its SPIN investigations to the White House which would then make appropriate disclosure of this information to the Senate, consistent with the needs to secure the confidentiality of sensitive information, sources and law enforcement methods. The appointment of a nominee requiring Senate confirmation requires the interaction and ultimate agreement between the White House and Senate. The FBI has and should have no stake in the nomination or "advice and consent" process. The FBI should not be drawn into this essentially political dialog. To place the FBI in any other position could endanger the FBI's objectivity and independence upon which both the White House and the Senate must ultimately rely.

ISSUE: THE BACKGROUND INVESTIGATION OF JOHN GOODWIN TOWER

Background.—On 12/2/88, the Office of the President-Elect (OPE) requested that the FBI conduct and expedite full field investigation on former Senator John Goodwin Tower, who had been nominated as Secretary of Defense. Contained within the initial request was a White House request to resolve a rumor of Tower's alleged involvement with a female foreign national during his assignment to the Geneva Strategic Arms Reduction Talks during 1985–86.

Almost immediately upon initiation, the FBI began to receive allegations concerning (1) alcohol abuse (2) sexual misconduct (3) conflict of interest with defense contractors (4) improper campaign funding activities and (5) Tower's involvement in the "Ill Wind" investigation. Tower's nomination became a front page media event resulting in numerous allegations being received by both the FBI and the Senate Armed Services Committee (SASC) on almost a daily basis.

Summary memoranda containing the results of the FBI's current investigative status were furnished to the OPE on December 13 and 23, 1988, on January 6, 13, and 25, 1989 and on February 8, 20, 27 and 28, 1989.

KEY EVENTS AND TALKING POINTS

During the period of February 1–2, 1989, a rift developed between Senator Sam Nunn, Chairman, SASC, and the Office of Counsel to the President (OCP) over the OCP's handling of the Tower confirmation process.

Pursuant to a letter dated 2/2/89 to Director Sessions from Senators Nunn and Warner of the SASC, and with the approval of the White House, additional investigation was requested into SASC concerns of Senator Tower's continued abuse of alcohol and womanizing, focusing on the period since Tower left the Senate (1983–89).

On 2/7/89, new developments involving plea agreements in "Ill Wind" necessitated the FBI having to ask for additional time to resolve alleged illegal campaign contributions to Senator Tower by "Ill Wind" principals. The Attorney General and the White House concurred with the need to resolve this issue.

Immediately upon the return of the Senate from an 8 day adjournment, on 2/20/89, a 140 page summary memorandum summarizing and resolving most of the various issues and sub-issues was submitted to the White House. The FBI investigation did not disclose any illegal activity on the part of Senator Tower. However, the investigation did confirm a prior pattern of alcohol abuse as well as the Senator's continuing sporadic use of alcohol, with indications that he had greatly reduced his consumption levels during 1983–89.

To date the FBI has submitted nine summary memoranda totaling 371 pages, with enclosures totaling another 137 pages. The FBI has interviewed approximately 500 individuals and has re-interviewed 20 of these individuals.

Investigation involving review of office indices has been conducted in all 58 field offices and active investigation has been conducted in a total of 38 field offices, the principal of which include WMFO, Dallas and Houston. In addition, investigation was conducted in seven foreign countries by both the FBI and the State Department at FBI request.

The FBI's summary memoranda addressed 21 separate issues with sub-issues which required the FBI to investigate and resolve 69 separate allegations against Senator Tower.

The summary memoranda were organized by alphabetical designation by issue and source. Each sub-issue was then outlined by numerical designation. The reader was cross-referenced by page number and issue title to the prior summary when an issue was continued from one summary to the next.

Each issue was fully addressed beginning with the original allegation and all pertinent FD–302's in their entirety were incorporated behind each discussion.

The scope of the entire Tower investigation was solely left to the discretion of the SPIN Unit of the FBI. The White House did not attempt to limit or curtail in any way the FBI's investigative efforts or limit the timespan of the investigation.

Our summaries were provided to the White House which then departed from its recent practice of allowing a personal review of the summaries by only the committee chairman and ranking minority members. In this instance, the White House furnished copies of the summaries to Senators Nunn, Warner, and Dole and allowed the senior Senate SASC staffers to have custody of the summaries to assist in their analysis of the investigation for their respective Senators.

In addition, the White House made SPIN Unit supervisory personnel available on three occasions for SASC interview at their request to provide detailed explanation of the FBI summary memoranda.

PROCEDURE FOLLOWED WITH DEROGATORY INFORMATION

Senator HOLLINGS. Maybe you should change that name, SPIN. That is just what we are worried about.

Senator RUDMAN. How about whirl? [Laughter.]

Mr. SESSIONS. They are special investigations. That is what they are, SPIN.

Senator RUDMAN. Mr. Director, let me just read on page—well, the pages aren't numbered. It is page 3. I found this very interesting.

It says:

> Results of special investigations are reported to FBI headquarters by teletype and reports which are then summarized in memoranda form in the SPIN unit. This summary memoranda is provided to the White House. Derogatory information, if developed, is included in the summary and is attributed to the person or persons who provided the information. If these persons request confidentiality, their identities are concealed, but the White House is provided information concerning the individual's association with the appointee and the basis of the individual's knowledge of the derogatory information——

And here is the part:

> So that the White House can properly assess the significance and pertinence of the information. Complete texts of such interviews with the identities concealed, where appropriate, are also provided to the White House along with the summary or are incorporated into the text of the summary.

The part I found fascinating here was, "so that the White House can properly assess the significance and pertinence of the information."

Did I understand two things from that? One, you don't attempt to assess the pertinence and the significance of the information?

Mr. **Sessions**. That is correct.

Senator **Rudman**. You do not.

Mr. **Sessions**. We may summarize, but we do not assess.

Senator **Rudman**. So what you are saying, so I understand, is that White House counsel has an obligation, if they wish to fulfill it, to, in fact, assess the significance and pertinence of the information that you supply?

Mr. **Sessions**. It would be my assumption that they would do that.

Senator **Rudman**. That is very interesting, and Mr. Chairman, I really thank you. It just seems to me that in terms of the future, one of the problems we had in the recently concluded—what is the right word for it—I guess war upstairs——

Senator **Gramm**. The inquisition.

Senator **Rudman** [continuing]. War upstairs which both Senator Hollings and I will be getting our Purple Hearts for next week, was that this was not clear. The FBI did its job. I, in my prior life, have read many FBI reports. It was very thorough, very complete. I understood what I was looking at, but I didn't see any evidence, in looking at it, of the White House doing what is anticipated in this memorandum.

We just got a lot of raw data, and everybody had a right to give it whatever weight they wanted to give it. But I am going to discuss this with Boyden Gray, because I wonder if he has ever read this.

RECUSAL OF DIRECTOR SESSIONS FROM TOWER NOMINATION

Mr. **Sessions**. I am sure you know, Senator Rudman, that at the outset, from the moment that the nomination came down, I immediately recused myself for the reasons that we all know.

Senator **Rudman**. I do know that.

Mr. **Sessions**. So I stayed totally away from that. I have not read the memorandum to which you are referring. I have now seen a part of it this morning because I was aware that it was there, but I have not involved myself, in any way, in that particular background investigation.

Senator **Rudman**. But that is very interesting, I think, to all of us for the future, because essentially, what this says is that the FBI is going to do its job in the way it always does it, but the responsibility for assessing significance and pertinence, and I would add to that, reliability, should be up to the White House. They should consult with us—not that we want them to filter it, but we would like them to do a little work on it, I suppose.

PROPOSED CHANGES IN NOMINATING PROCESS

Senator **Gramm**. Mr. Chairman?

Senator **Hollings**. Yes.

Senator **Gramm**. If I could comment on this, first of all, I guess Senator Tower got his Purple Heart posthumously.

Senator **Rudman**. Right.

Senator **Gramm**. Mr. Chairman, I would just like to add, since Senator Rudman has brought it up, that obviously, if we are going to use these FBI reports in the future the way we used them in the

Tower case, I think everybody would agree, no matter what side they were on in that debate, that there have got to be some fundamental changes in these reports. They are not well-suited for the purpose they were used for in the Tower case. They may be well-suited to give a warning to the White House that they may have trouble with a certain individual, or that things may come out about the individual that could be harmful and the White House may then want to look more closely at it.

But in terms of making a judgment about a nominee, I think the report is not well-suited. A perfect example being the sergeant, whose statements turned out to be highly questionable because he wasn't at the base when Senator Tower visited, and he was later released for medical reasons. He received mental treatment in the Air Force. None of that was available in the report.

So I am not saying I blame the FBI. The point I am making is, if we are going to use the Tower case as a standard, we are going to have to approach these reports very differently in the future, because they are being used now for a purpose that I don't think was ever intended, and they are not well-suited to that purpose.

Mr. SESSIONS. I presume that you are satisfied with the procedure the FBI uses to give what it has received and to not, in any way, take that information and pass judgment upon it, but to deliver it.

Senator RUDMAN. Absolutely. Speaking for myself, the last thing we want the Bureau to do is to get into picking sides on these things. The Bureau should give raw, unedited information. The White House counsel, it seems to me, has some obligation to follow up on information that could be disturbing to them or to the Senate.

Mr. SESSIONS. You may rely on the fact that the FBI will do its dead level best to stay with that standard.

THOROUGHNESS OF FBI REPORTS

Senator HOLLINGS. It is particularly appropriate now, after the fact, at least in this particular case, to look at the professional or lack of professional nature of that study. In your memo you say, "Because of their sensitivity, SPIN cases conducted for the White House require the most comprehensive investigation to assure that if derogatory information exists, it is developed fully and resolved whenever possible."

That is what Senator Gramm was saying. The information wasn't developed fully. I mean, here is a report, a little memo of the FBI, with more comprehensive information than the actual SPIN report. The actual report was not comprehensive, and it didn't give a comprehensive look-see into derogatory information. "It is developed fully * * *." "This standard of complete thoroughness * * *", and that is underlined here in your memo, "* * * in SPIN matters is absolutely essential * * *."

I agree, it is essential. Yet, some of us who have been reading background reports for years, have found a sort of calculated carelessness. If there was an incident at a particular bar and confirmed by the bartender, then two other bartenders were brought in, but never associated with the particular incident. They just said, "No, I never did see the subject under the influence or abusing alcohol."

But you see, the allegation and the denial never were aligned, in three instances that I know of. I say this is unprofessional. Once, when you have got thoroughness where someone said he had known him over the years and concluded and so forth, you didn't get the facts that would bring about that kind of conclusion. He just said—I won't use the description, because that is confidential. In any event, I didn't see any followup.

"How did you conclude that about Mr. So-and-so? How many times, and have you really seen him in the last 5 years or last 6 years?" or whatever. There was no followup. There was a sort of calculated carelessness, at best. I agree with Senator Gramm and Senator Rudman that we have got to be very thorough. And more than that, when you make the summary that you know, as old time lawyers, you, the judge, you wouldn't allow it in your court. You want direct evidence. You would look at me and say, "Get that out. That is not to be received."

I don't know if there is a better way. We have always relied on those summaries. Then the question is: Is there a summary of the summary that I am receiving? Specifically, I see here there were nine reports. I remember very definitely we had six, then we got seven and then we got eight. We were told to go back because there were eight reports, but I see you list nine.

I know we didn't get the ninth. Were some of the matters left out by the White House? Do you, in a particular situation of this kind, check to see that there has been no spin put on your SPIN?

Mr. **Sessions**. You mean no deletions, nothing taken or left out?

Senator **Hollings**. Well, no deletion or alteration or sort of deterring you or guiding you in another direction or something else like that. You know, we are lawyers, and if I were defending an individual, I could minimize this, obscure that, leave out some corroboration. I don't say that was done. I just don't know.

But do you know?

Mr. **Sessions**. No; I know of nothing.

Senator **Hollings**. You know of nothing one way or the other.

Mr. **Sessions**. If I were put under oath, I would say that I would be absolutely astounded if there were, because it is absolutely essential that the FBI produce the best investigation it can, run down every lead it can in a proper way.

USE OF BACKGROUND INVESTIGATIONS

Senator **Hollings**. That is the Bureau. That is not what I am referring to, the Bureau. I am talking about after the Bureau now comes the White House. You have never followed through and looked at what we as Senators, then, have received?

Mr. **Sessions**. No, sir; I have not.

Senator **Rudman**. Mr. Chairman?

Senator **Hollings**. Yes?

Senator **Rudman**. You know, this is a very interesting point you raise. This could be very helpful for the future, Judge Sessions. You recused yourself very properly, but now it is over, so there is no problem with your looking at documentation at this point.

Would you agree with that? At this point, retrospectively, it is done?

Mr. SESSIONS. I may do it some time. I have not done it to this moment.

Senator RUDMAN. I am sure of that. I think it would be very instructive to put yourself in the position of the Members of the U.S. Senate to look at the file that—I refer to it as a file, because it is a file, it is not a report. The FBI didn't do a report. It did a compilation.

I would very much like you to do that, and when you look at that, with your very trained eye as a former trial lawyer and a judge, a Federal judge, when you look at that report, I think you will start to get a sense of what the concern is that Senator Hollings is speaking of, that we are speaking of, and particularly, why I referred to this provision about the significance and pertinence. The FBI was under terrific pressure to get this information, and the White House was pushing and the Senate was pushing.

There was not an opportunity to go out and do the kind of corroboration or refutation, in some cases that, in my view, there should have been. I don't know how it would have come out. That is what Senator Hollings referred to. But it just seems to me that the White House did have an obligation to do something with some of the information or require followup work.

I would very much like you—it will take you about an hour to do it—to sit down with that eight- or nine-part file that we finally had upstairs. With your trained eye, I hope you read it, and I think you are going to understand why we have had the grief that we have had here in the last couple of weeks. I would appreciate it if you would do that.

INVESTIGATION OF SECRETARY OF TRANSPORTATION

Senator HOLLINGS. There is no question about that grief. As I related publicly, I had just that experience. When they talk about McCarthyism, you are looking at the Senator that investigated Senator McCarthy. I served on the Hoover Commission. I was appointed by a Republican President, Herbert Hoover and commended for my work.

But, right to the point. I have seen many, many an FBI background investigation and more recently, in my capacity as the chairman of the Commerce, Science and Transportation Committee, had some difficulty during the month of January or early February with a colleague who finally came down and said, "I am not going to vote or allow that particular appointment." I am talking about the Secretary of Transportation Skinner. "I am not going to even allow that to come up unless I can see the FBI report."

Thereupon, I said, "Well, I have no objection to your seeing the report. I have tried to relate it to you as accurately as I can as chairman. I have no objection and I will ask the FBI." I asked the FBI and was told "The FBI has no objection, but we will have to check with the White House."

When I checked with Mr. C. Boyden Gray, the White House counsel, he just absolutely opposed it, said it couldn't happen and never would happen, that no one could look into it other than that.

I said, "Well you are going to delay and make a case that shouldn't even be made down on the floor," and, "There's no harm," Mr. Skinner said. "Show the FBI report." He had no objection.

Then, having gone through all that I finally won the argument with the colleague, and Mr. Skinner was duly and unanimously confirmed. Then we come around to the Armed Services Committee, and not only do all the Armed Services members see it, but all the Senators see it. So that particular colleague really has his nose out of joint now. You act like the handling of FBI background reports are uniform, categorical, and that all is understood and clear and wonderful. No, no, no, no. It is not that way at all.

In some committees, only the chairman may see the report; other committees, perhaps the Judiciary, the full committee sees the report on the judges. In the Armed Services recent case, all the Senators saw it. So you begin to see what is happening.

ACCESS TO NOMINATION FILES ON SENATOR TOWER

Senator **RUDMAN**. Mr. Chairman, with this particular nomination now pending before the Armed Services Committee, only the chairman and the ranking member have seen the FBI file, not even the rest of the committee. Whereas with the Tower nomination, everybody saw it, and, of course, the reason is quite simple: It is in the control of the White House, and the prior nomination was in trouble, and this one isn't. It is not very difficult to understand.

Senator **HOLLINGS**. During Mr. Cheney's investigation, did he get the same questions as Mr. Tower?

Mr. **SESSIONS**. I presume, certainly.

Senator **HOLLINGS**. In other words, I looked at your memo, and it says, under i. "prescription drug, alcohol abuse".

Mr. **SESSIONS**. I presume that he got the same question.

Senator **HOLLINGS**. So he was given the same test, not a different standard. Mr. Tower just gave a different answer.

Right to that particular point, since it has been raised about my Purple Heart, I just noticed this. I might also get the Distinguished Service Cross. It says here in your memo:

> The FBI investigation did not disclose any illegal activity on the part of Senator Tower. However, the investigation did confirm a prior pattern of alcohol abuse, as well as the Senator's continuing sporadic use of alcohol, with indications that he had greatly reduced his consumption levels during 1983 to 1989.

Now, my best friend here, he jumped up and down and said, "No, none, zero," and jumped on me for character assassination for what the impartial FBI report has found.

Senator **RUDMAN**. Can we change the subject, Mr. Chairman? [Laughter.]

Senator **HOLLINGS**. You can change the subject, but I am glad to get my Distinguished Service Cross. Thank you. [Laughter.]

Senator **GRAMM**. Are we voting on this Distinguished Service Cross?

Senator **RUDMAN**. Not until he gets his quorum.

DUE PROCESS PROBLEMS IN NOMINATION PROCESS

Senator **GRAMM**. Mr. Chairman, I would like to take one subject, not about Tower, but about the FBI.

Senator HOLLINGS. Yes.

Senator GRAMM. Thank you.

Judge Sessions, you and I had a visit way back when you first came in about an old boy I went to high school with who was nominated for the head of a major independent agency. I went over the problem there and, for the committee, basically what had happened was that this fellow had had several wives, some would say many wives, and the third one, I think it was or maybe I am being unfair, maybe it was the second one, said in the FBI report that he had done business, had a business relationship with a fellow who turned out to be a big guy in organized crime.

So to make a long story short, the White House looked at that and decided, "Look, forget it. We can find somebody else to head this agency." As it turned out, his association with this guy was he, the fellow who was being considered, was in the real estate business and he once sold this guy a building.

I raise this once again in the context of the Tower debate to urge you, as we begin to look back at the FBI report and the things it is being used for, to look at the whole approach, not just in terms of what you are providing the White House to make a decision on, but on the basis of the new use to which it is being put.

What is missing here is any semblance of due process, and I know that the FBI can't conduct criminal investigations on appointments, but there has got to be a way that if a fellow's second or third ex-wife makes some charge against him that he is at least given some kind of opportunity to respond to it for the report before people read it and judge it.

Senator RUDMAN. If the Senator would yield, though, that is exactly what this memorandum says the White House counsel is supposed to do, in my opinion.

SOLUTION TO PROBLEM WITH BACKGROUND INVESTIGATIONS

Senator HOLLINGS. That is right, and that is what the FBI did. The gentleman is nodding his head, let the record show, because I looked to see the denial. I had been through, for example, the Talmadge case, and I wondered whether I had another Talmadge case on my hands.

Specifically, what would you, as Director of the FBI, suggest with respect to our problem, namely, the U.S. Senate's problems and frustration? I have always had confidence in the backgounders. I have always gone along with the formal procedures and understanding that you have with the White House, the client relationship.

However, and I had always agreed that only the chairman and the ranking member should review the report, because I never did want to, frankly, have the responsibility for any kind of leaks. I was always very careful about the ones I handled.

Now, getting to the particular problem at hand, what do we do? Do we, in the Senate, now that this whole thing has come up about client relationship, do we depend upon one summary coming from the Bureau to the executive branch? The problem with that is, I can tell you this executive branch, rightfully or wrongfully, is known to be very, very politically sensitive.

I heard they put out a questionnaire, Judge Sessions, that asked a poor rabbi on the Holocaust Committee down in Atlanta, GA, what President he voted for in the last four Presidential elections, and if Republican, what contributions he, the rabbi, had given to Republican nominees for President. See what I am saying?

Now, that being the case, I am beginning to wonder.

Senator **Gramm**. Can you ask him this, Mr. Chairman?

Senator **Hollings**. This committee you all got going over there that cleanses people, everybody wants a delay.

Senator **Rudman**. We don't want a delay here. I know I don't.

Senator **Hollings**. The Bush administration definitely has it. I don't know the name of it.

Senator **Gramm**. I want to appoint good people.

Senator **Rudman**. Mr. Chairman, will you yield for just a minute?

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Senator **Hollings**. I want to know, what are we going to do? In other words, we have got a movement on foot in the U.S. Senate saying, "All right, let's use our own investigators from the particular committees or use them from the Special * * *."

Senator **Rudman**. PSI.

Senator **Hollings**. PSI, what is that under, Government Ops?

Senator **Rudman**. Yes; the Permanent Subcommittee on Investigations.

Senator **Hollings**. Yes; are you suggesting that we start an investigation, backgrounder, of our own or not or what?

Mr. **Sessions**. It seems to me that the problem lies in your gaining the information that you need, and yet, at the same time, knowing that you want those FBI reports to be absolutely secure and go where they should go and not otherwise.

Senator **Hollings**. Right.

Mr. **Sessions**. That they not be leaked and that we not be providing one thing for the client and something out the back door to somebody else. Simply, you cannot tolerate this; you would not want it and you would not stand for it. So I would think that in those instances where you need access to information, that you should pursue that in all instances with whoever the client is to gain an understanding about what would be made available to you.

Senator **Rudman**. Which would be the White House.

Senator **Hollings**. Go ahead. I yield to you.

Senator **Rudman**. No; we will go on to the rest of the hearing. But I was sitting here thinking of historical perspective, that 100 years from now, when some political science students were looking at the record of this hearing——

Senator **Gramm**. Come on, Warren. They have got better things to do.

Senator **Rudman**. No; people down in Texas look at things like this. [Laughter.]

This was an appropriations hearing? We are discussing money here, about what the FBI needs, and we have gone 45 minutes. But I tell you, this is more interesting than money, Mr. Chairman.

Senator **Gramm**. Wait a minute.

Senator HOLLINGS. Just to correct that, most respectfully, this committee was the one that revealed a lack of intelligence security in the Moscow Embassy. Now, yes, we were looking at money, but we revealed a tremendous security breach. It was this subcommittee that led the way on that particular score, and so we do get into these large matters, and appropriately so.

FBI AND U.S. MARSHALS FUGITIVE RESPONSIBILITIES

Senator RUDMAN. I want to ask just one question, if I could, on another subject, Mr. Chairman. I am curious whether the dispute between the U.S. Marshals Service and the FBI that was in full bloom last year is now settled.

Mr. SESSIONS. It is my belief that the U.S. Marshals Service and the Federal Bureau of Investigation, acting under the order that was entered by then Attorney General Meese, giving to the FBI what it already had, and that is the conduct of investigations in connection with the UFAP cases, unlawful flight to avoid prosecution, that is basically settled. We have no further problem except for those which might arise occasionally from some informal operations, but those are always discussed. There is an appeal procedure. There is an appeal process that is available if we have difficulties.

It was very important that that UFAP investigative responsibility be very clear, because those investigations are extremely important to the FBI, and they are in connection with those cases which relate to our jurisdiction. I am pleased it was settled.

Senator RUDMAN. The other question I have, Judge Sessions, relates to a matter of industrial military espionage, and it is classified. I will submit it and have it hand-delivered to you in your office.

Mr. SESSIONS. Thank you.

Senator RUDMAN. I would appreciate a response at your earliest opportunity.

Mr. SESSIONS. I will be pleased to do that, sir.

Senator HOLLINGS. Senator Gramm?

FBI EFFORTS INVOLVING SAVINGS AND LOAN FAILURES

Senator GRAMM. Thank you, Mr. Chairman.

Judge Sessions, the FBI is very much involved in investigations concerning the savings and loan problem in Texas. I wanted to ask you, do you feel you have enough resources in working with the U.S. attorneys to carry out those investigations?

As you know, we in Congress are committed to trying to recover as much money as we can from those that abuse the public trust. I am committed to that effort, even in cases where you can't get blood out of a turnip, you can get satisfaction from people that have violated the law. Do you feel you have enough resources to do the job you need to do there?

Mr. SESSIONS. What is contemplated now, through the Department of Justice allocation, seems to me to be sufficient for us to begin the attack, to enhance our attack on that problem, that is, the failure of S&L's and the failure of banks.

In the past 2 years, we have consistently increased the number of white-collar crime people we have, and the resources allocated to those failures have increasingly become more evident. I believe that the Department of Justice will, in fact, meet our needs for approximately 236 additional special agents and 118 support people in the 1989 supplemental, and I understand this morning that they are pretty well locked on that.

The main thing is we need to move quickly; we need to move with a consolidated activity with the Department of Justice components, because it isn't solely FBI investigations. It includes the assistant U.S. attorneys needed to prosecute those cases and the resources to do it. So it is very important that happen. I am comfortable.

FUNDING FOR FBI DRUG RESOURCES

Senator **Gramm**. I have got a question here, Mr. Chairman, that Senator Hatfield wanted to ask, if I could just ask it. He says that he is concerned specifically with FBI drug enforcement resources. The first question is: Are you using all the resources that you have available?

Mr. **Sessions**. In fact, we are, Senator, in that area, our target staffing level—we call them TSL's—is approximately 1,100 agents per year. That is out of about 9,500 agents. We actually use more than that, and we have consistently, over the years, used more than we have received, but all those people are utilized directly where we say they are.

In other words, out of that 1,100 agent TSL, target staffing level, there are about 1,400 agent work-years that we have actually used.

Senator **Gramm**. His subsidiary to that is how many agents have been appropriated? I guess you have just answered that.

Mr. **Sessions**. I have answered it in part.

Senator **Gramm**. Well, go ahead. How many agents are you using?

Mr. **Sessions**. With the D'Amato-DeConcini bill, we have received $15 million and 120 additional agents, part of those work-years are in 1989, and part of those are added in 1990. All of those will be, in fact, put into that particular area.

You know we have divisions. For instance, the Congress' intention, as I understand it, back in 1982 and 1983 and 1984 was to support the organized crime drug enforcement task forces. There are some 414 agent positions that actually go to that and are part of that.

We have staffed it beyond that by pulling from other resources within the FBI, that is, from white-collar crime and from organized crime. So it, to me, is very important that we support the drug effort. Our national drug strategy is extremely well defined. It is, I believe, compatible with the Department of Justice's needs, and I feel good about it.

But the resources are always a problem. Ultimately, the responsibility for the balance falls with the Department of Justice and with the President of the United States and with Congress. I am willing to follow it putting the resources as best I can to carry out the FBI's national drug strategy, which is targeted at major drug trafficking organizations dealing in heroin and cocaine with long-term investigations.

That means we are not doing street activity by and large. We are not doing the role that is carried out so admirably by the DEA. We are targeted at those long-term investigations to wipe out organizations, and you see we are consistently doing that.

I don't want to tout it, but the heroin seizure up in New York City, yielded 820 pounds of 90 percent pure heroin, and $3 million cash. Also 31 people in that organization were wiped out. To me, that is important.

IMPLEMENTATION OF THE FBI'S NATIONAL DRUG STRATEGY

Senator GRAMM. The final question, and you have touched on it but I want to be sure, in fairness to Senator Hatfield, to get it on the record. He says, "I am familiar with your national drug strategy. What do you need to implement that strategy effectively, particularly over the next 2 or 3 years?"

Mr. SESSIONS. I think we need to work consistently within the framework with the moneys that are supplied through the Congress and through the Department of Justice. We have our opportunity in the Department Resources Board to go forward with our programs and let them be analyzed. We can, Senator, fairly well look at what we are doing with our resources.

For instance, we are able to attack about 35 to 40 percent of the 450 identified major drug trafficking organizations out of South America, Central America, Sicily, and Italy. We know that with the 1,400 agents we use, that we can attack about that percentage.

So you can almost transfer it and say, well, if they can do that much with this amount, then the amount that may be required has to be so much. It seemed to me that we have always had that opportunity within the Department and with OMB to put forward that argument for what we needed.

Senator GRAMM. Good. Thank you, Mr. Chairman.

FBI RECRUITMENT

Senator RUDMAN. May I just follow up with one more question?

Senator HOLLINGS. Sure.

Senator RUDMAN. I am curious. How is your recruitment going in terms of agents, both with the FBI and DEA? How is it going in terms of the caliber of people you are getting, the type of applicants you are getting and so forth?

Mr. SESSIONS. The report I get from Assistant Director Jim Greenleaf at the FBI Academy, is that in his opinion, the quality of the people he sees coming in is as high or higher than it ever was. It is an outstanding quality.

We are making every effort, because of the agents we will lose over the next 9 years, to be sure that we have a very high level of people who can fill those rolls. We are losing 50 percent of our agents in the next 9 years. It is important that we be able to assure ourselves of quality.

Senator RUDMAN. What is the current academic requirement for special agents?

Mr. SESSIONS. An applicant is required to be at least 23 years of age or no older than 35 years of age. He or she must have an undergraduate degree and must have 3 years of work experience thereafter. Of course, if the applicant has a professional degree, a law degree or an accounting degree or a specialty degree, then he or she can enter on duty without 3 years of work experience.

Senator HOLLINGS. How many agents do we now have?

Mr. SESSIONS. About 9,500, sir.

Senator HOLLINGS. We are up to 9,500?

Mr. SESSIONS. Approximately.

STATUS OF MINORITY AGENTS

Senator HOLLINGS. What about minorities, Hispanics and blacks?

Mr. SESSIONS. This is extremely important, Senator.

Senator HOLLINGS. Tell us about that, because it has been aired in the news that we have been rather casual about it. Tell us your policy.

Mr. SESSIONS. I would not think that the FBI could be described as being casual at all. One of the first things I said when I came in was that we must be absolutely certain that we have no racism or discrimination in the FBI, because we are here to investigate the law, and civil rights is a very great part of it.

But more than that, if there were a perception in the minority community that we were a discriminatory organization or a racist organization, we could not carry out our recruiting responsibilities. I have taken extensive steps—and if you pull my string, I will talk about it by the hour—to be sure that in every single phase, we have taken any corrective action that would be assured to make certain that we properly recruit, we properly assign, we properly use, we properly transfer, and we properly train. To me, the revitalization of it, the review of it is good.

We have approximately 850 women who are special agents. We have approximately that same number, approximately 400 plus who are Hispanic or Mexican-American and approximately 400 plus who are black. We are trying to recruit wherever we can for the quality needed, and we are going to get them.

Senator HOLLINGS. That 850 women is a very interesting figure, because the former director, Mr. Hoover, said if he had to take a woman on the force, he would send her to Anchorage. I don't believe Anchorage could hold 850. [Laughter.]

Mr. SESSIONS. Let me put it this way. Those women who come on have made a tremendous contribution to the FBI, and they are great agents. They are the people whom we want and whom we hope to hold.

FBI DRUG INVESTIGATIONS

Senator HOLLINGS. A parochial question, you have put in an agent down in Columbia, SC, Fred Verinder.

Mr. SESSIONS. Fred Verinder, yes.

Senator HOLLINGS. He is good. But, he comes down, and he finds no cases, no drug cases in Myrtle Beach, Charleston, Beaufort all along that coastline. Are we that cleaned up down there?

Mr. SESSIONS. No; you are not that cleaned up.

Senator HOLLINGS. I didn't think so.

Mr. SESSIONS. Let me say this, you know that we have national drug strategy. There is also the organized crime drug enforcement task force concept, which means that from the 13 cities, those core cities, there are networks reaching out all over the country. I know, for instance, that the South Carolina contribution to the *Catcom* case was extremely important, and that case meant that we got 93 defendants. We got 200,000 or 111,000 pounds of marijuana and a tremendous quantity of cocaine, plus seizures. That means that they are playing their part in the FBI's national drug strategy.

Senator HOLLINGS. Can I get some more down there under the extra agents? I did help Senator Rudman on his drug bill. [Laughter.]

Mr. SESSIONS. Senator, I would be delighted to account for you in every respect what they are actually doing and do it on a continuing basis. To me, it is extremely important that U.S. attorneys and special agents and special agents in charge of the FBI recognize that if there is a major local problem, a major crime organization, that both DEA and FBI are doing their best to be sure that we attack that problem.

The example I use often is one of U.S. Attorney Chuck Larsen in Cedar Rapids, IA. We would not normally have resources in Cedar Rapids that major southern cities have, but, not unlike South Carolina, what he did was he went forward, and they, we, and that group together wiped out an organization of 65 people. To me, that is significant. That is a major organization, even though they might not be described as major traffickers.

I have talked to General Thornburgh about this, but from your standpoint, I would just like you to start taking a careful look-see and make sure that the FBI agents are backed up and getting into the real drug cases and not just the penny ante—there is so much, I hate to characterize marijuana as penny ante, but that is the fact.

I have heard this from the agents' standpoint. They say, "We are frustrated because we are just going through a regular exercise. We could get the real ones," but they are not handling them, and they don't want to handle them, because it takes too much time.

FBI AND DEA EFFORTS IN DRUG LAW ENFORCEMENT

Mr. SESSIONS. I feel compelled, in a sense, to take up the honor of those law enforcement agencies that are otherwise involved. There are very definite assignments that the FBI has, and we know what our national drug strategy is, but we are not required to do those things that other agencies are charged with doing.

You are talking about street crime; you are talking about those areas of seizures which are extremely important and part of another agency's responsibility. So for instance, the DEA and the FBI, Jack Lawn and I understand our national drug strategy and our requirements.

We have taken, for instance, in six cities in the United States and put in what we call joint drug plans to be sure that the lead agency, which is the Drug Enforcement Administration and the FBI, use our resources to the greatest extent we can.

Jack Lawn understands the FBI's national drug strategy and the requirement that we go after major organizations, but they can't ignore what is on the street. They can't ignore it, but they do participate, as well, in long-term investigations with us.

What I am saying is it is a multifaceted approach. It is not easy when you have one element that can have the luxury of going after long-term investigations and not be involved in minor seizures.

TENURE OF DIRECTOR SESSIONS

Senator HOLLINGS. Then a final question, what would you suggest we do about our drug problem? Suppose you quit. No; you are not going to quit, are you?

Mr. SESSIONS. No, sir; I am not going to quit.

Senator HOLLINGS. Good.

Mr. SESSIONS. Thank you.

Senator HOLLINGS. Thank you, because we think you are doing an outstanding job. Suppose you did begin to write your memoirs in the next 10 minutes and looking back, are we attacking the drug problem correctly from the Federal Government's standpoint?

You have got just one facet of it. DEA, border patrol, Customs, Congress, executive branch, Education. Is there a better way from your experience and standpoint to get at this drug problem?

Mr. SESSIONS. I believe so.

COMPREHENSIVE DRUG STRATEGY

Senator HOLLINGS. We should be asking the right questions. I don't know whether we are.

Mr. SESSIONS. I think that is the right question. It seems to me it is absolutely essential that there be a drug solution that is comprehensive. The FBI has but one small part of that, Senator, and I recognize that, but our national drug strategy is extremely well-defined, and I think the other agencies have strategies that are probably as well-defined, although I am not familiar with them.

But it seems to me, for instance, that each of us carrying out to the fullest extent and as vigorously as we can our national drug strategy is important, and I think that Secretary Bennett will do that kind of review to be sure that in the comprehensive approach, not unlike the National Drug Policy Board, to be satisfied that that is the proper approach and to support those agencies doing it.

Senator HOLLINGS. Have you got any others?

Senator RUDMAN. Just one more.

Senator HOLLINGS. Yes; go right ahead.

RELATIONSHIP WITH DRUG CZAR

Senator RUDMAN. How do you see your relationship as it evolves with the new drug czar, Mr. Bennett?

Mr. SESSIONS. I see the relationship being one responding with factual information that will tell him fully and completely what the FBI's strategy is and what it does and how it uses its resources and to support that if we believe it is correct. I have done that.

The second thing I believe that is absolutely essential is that I respond to his perceptions of things that need to be changed.

For instance, you know and I know that he, the day before yesterday, targeted Washington, DC, and yesterday, we were involved in a meeting with him to look at what he believed could be our contribution and asked us what our contribution could be to that. Those kinds of discussions, I think, are very important.

DRUG PROBLEM IN THE NATION'S CAPITAL

Senator **Rudman**. It is interesting you anticipated my last question. It was more of a comment than a question. That is, that I just find it absolutely unacceptable and incredible that in the Nation's Capital, due, in my view to an inept local government that doesn't really understand what it is doing, we have got the situation on our hands that we have.

This city is not particularly the size of other cities in the Nation that have very good police departments. What did we have, three more homicides last night?

Mr. **Sessions**. That is correct.

Senator **Rudman**. I believe I read that this morning. I mean, this is the Capital City. It may have local control, but this is the Capital City, and we have foreign visitors, and we live here and the Government is here, and we have thousands of tourists here, and I believe that the FBI and the DEA, working with Mr. Bennett, have a very specific responsibility to try to help the local officials to do what they evidently don't know how to do themselves.

The great achievement that the mayor of the city announced this past week to fight the drug war was to have the police work 6 days a week. I mean, that is absurd and everybody who has ever been in law enforcement knows it. It is the worst type of tokenism you could ever have, in my view.

I hope that the FBI and the DEA are able to step in and, obviously, help when they are asked. I will make a prediction to you.

If this city continues to be a battleground, a lot of us are going to start looking at home rule again in terms of law enforcement and have a Federal constabulary to keep peace in this city, if necessary. I will introduce that legislation, if necessary.

You can't have blood running in the streets like a Third World capitol run by a despot. It is the mayor's fault; it is lousy leadership. Some of us are looking quietly into the situation and saying, enough is enough at some point. I think that 3 murders last night, and 75 so far this year is getting to the point where frankly, we don't like it up here.

There are those of us who know this is a Federal responsibility and will take the appropriate actions. This is the first public statement I have made about it.

Mr. **Sessions**. I think you will be pleased.

Senator **Hollings**. I was going to join in his sentiments. I think he is right on target.

Mr. **Sessions**. Both you and Senator Hollings, I think, would have been pleased with the comprehensive approach Director Bennett took yesterday. The U.S. Marshal Service was there. The Secret Service was there. The U.S. attorney for the District of Columbia was there as was the FBI and the DEA. There was a comprehensive approach to it asking us what we felt we could do to contribute to that. I was very pleased with that.

Senator RUDMAN. Good. The only people that weren't there that might have to be were the 82nd Airborne, Mr. Director.

CHENEY BACKGROUND INVESTIGATION

Senator HOLLINGS. Mr. Director, one final thing I note, because I read last night where Senator Dole said that Mr. Cheney would be confirmed rather than an executed; it would be a confirmation rather than an execution. The reason for the execution, he claimed, was rumor, innuendo, and character assassination. I note here, and I am reading from the FBI memo, "This standard of complete thoroughness in SPIN matters is absolutely essential to protect in the nomination process and assure that the nominee's character is not impugned by spurious information, rumor or innuendo."

As far as you know, there wasn't any spurious information, rumor, or innuendo, passed on by the FBI in its report to the White House?

Mr. SESSIONS. I have absolutely no knowledge of the report, Senator, at all, so I would hope that it did not, but I know Mr. Clarke is here and he can answer your question, but I have no knowledge.

Senator HOLLINGS. You wouldn't pass on spurious information, rumor, or innuendo?

Mr. CLARKE. We would pass on information that is told to us by individuals that we would contact in conducting the report or the investigation. If an individual makes an allegation, we would attempt to determine who, what, why, when, how did he come across that information, and the effort in proceeding along those lines would also be included along with that allegation, and then, one reviewing that information could make a determination as to its validity or reliability.

Senator HOLLINGS. Well, very good. In other words, you did your dead level best to make sure it didn't include rumor or innuendo?

Mr. CLARKE. Yes, sir.

ADDITIONAL COMMITTEE QUESTIONS

Senator HOLLINGS. Thank you very, very much, Mr. Director. We appreciate it.

I understand, Mr. Glover, you are retiring, aren't you.

Mr. GLOVER.. Yes; I am, Senator, the end of March.

Senator HOLLINGS.. We might get you to work for us. [Laughter.]

Mr. GLOVER. I am already committed.

Senator HOLLINGS. You are already committed. That is very good.

I have some other questions that we will put in the record here. We have Mr. Lawn, and we want to move on. We do appreciate your appearance.

Mr. SESSIONS. I will be pleased to respond. Thank you.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

Allocation of Agent Workyears

QUESTION: Since becoming involved in drug law enforcement in 1982, this work has grown to consume a substantial number of agent workyears. In fact, over the past few fiscal years the number of utilized agent work years for drugs has actually surpassed the number of agent workyears funded. Has this reprogramming of agents come at the expense of other Federal Bureau of Investigation (FBI) investigative programs, particularly Foreign Counterintelligence?

ANSWER: The response to this question is classified and has been provided separately to the Subcommittee.

QUESTION: Has drugs replaced foreign counterintelligence as the principal responsibility of the FBI?

ANSWER: The response to this question is classified and has been provided separately to the Subcommittee.

Drug Enforcement

QUESTION: As I understand the FBI's National Drug Strategy (NDS), major international and national drug trafficking organizations are targeted for investigation by the FBI. Smaller, loosely connected regional drug trafficking groups are not a primary concern to the FBI.

The drug trafficking network operating in South Carolina appears, for the most part, to be carried out by smaller organizations. Yet, much of the illicit drugs being sold there originate in Colombia, Mexico, and Southeast Asia.

Since the drug traffickers in South Carolina are not necessarily closely linked to major organizations, has this hampered the FBI's drug law enforcement efforts in my State?

ANSWER: Small and medium-sized FBI field offices which do not have priority international drug trafficking organizations present are encouraged to investigate the most significant drug trafficking organizations operating within their geographic region. Consistent with our NDS, approximately 13 regional drug trafficking organizations are under FBI investigation in South Carolina. The FBI's Columbia Field Office had a major role in a multi-State and international Colombian drug trafficking organization investigation resulting in the indictment of 93 individuals, the dismantling of seven trafficking organizations, and the seizure of 11,000 pounds of cocaine, 211,000 pounds of marijuana and $1 million in cash.

The FBI enjoys an excellent working relationship with other law enforcement agencies in South Carolina including DEA and the South Carolina Law Enforcement Division.

The FBI's NDS is not designed to address individual drug traffickers operating on a relatively small scale in various sections of South Carolina and other States, and our intelligence base to date, has not identified significant organizations in these areas.

The FBI's NDS concentrates its limited drug investigative resources on the drug importation and distribution organizations representing the greatest threat to the United States. Included in the set of priorities are other major drug trafficking organizations which are regional in nature.

QUESTION: What do you anticipate the effect of the Anti-Drug Abuse Act of 1988 to be on the ability of the FBI to combat illegal narcotics in the United States?

ANSWER: As a result of the Anti-Drug Abuse Act of 1988, the FBI received 279 positions and $15 million for its Drugs Program for 1989. With $15 million in additional funding, the FBI will allocate 120 additional agents to combat the pervasive drug problem throughout the United States. With the resources made available beginning in 1989 from Anti-Drug Abuse Act of 1988 and annualized in the 1990 request to the Congress, the FBI has set priorities on the allocation of these additional resources.

In 1986, the FBI formulated its National Drug Strategy (NDS). The NDS established five major objectives that focus the FBI's limited resources on those drug trafficking organizations that are responsible for controlling significant illegal drug trafficking activity in the United States. These objectives are:

a. Conduct investigations directed against major cocaine and heroin trafficking organizations on a nationwide basis, seizing their illegal profits through forfeiture proceedings;

b. expand and enhance the existing drug intelligence base;

c. with DEA, identify trends and make projections of organized drug trafficking activities on a national basis;

d. concentrate resources in major centers of drug organizational activity; and

e. provide assistance to other Federal, State and local law enforcement agencies investigating drug trafficking organizations operating in a local and regional area.

The NDS led to a more effective focusing of resources on the highest level of drug trafficking organizations, both nationally and regionally. These sustained, long-term investigations are resource intensive, but the results are commensurate: the neutralization of the highest level of drug trafficking organizations; and the seizure and forfeiture of their assets.

Included within the FBI's 1990 request to the Congress is the funding required for the full annualization of the positions. This enhancement will allow the FBI to target additional Colombian/South American, Mexican, Asian and European drug trafficking organizations that are major importers and distributors of cocaine and heroin, all in furtherance of the FBI's NDS goal of reducing the incidence of illegal drug trafficking and the criminal and societal problems attendant to drug trafficking.

Most major FBI drug investigations are international in scope and require an ever-continuing commitment of language-trained agents. With the funding available, bonuses provided under the Drug Bill for second-language trained agents will be provided, increasing the FBI's ability to penetrate international drug trafficking organizations.

Counterterrorism

QUESTION: Could you provide the committee with a brief overview of the terrorist threat facing the United States? What is the status of the investigation into the pipe-bombing of Mrs. Sharon Rogers' van which occurred in San Diego last week?

ANSWER: While worldwide statistics indicate an overall increase in the number of anti-United States terrorist incidents conducted overseas, there have been no known terrorist acts within the boundaries of the United States attributed to an international terrorist group since 1983. Presently, within the United States, there are, among others, operatives from State sponsors of terrorism such as Iran, Libya, and Syria. These countries maintain large student populations within the United States. The vast majority of these students do not support terrorism. However, a minority within these student groups have demonstrated a fanatical dedication to these regimes and represent infrastructures that could be called upon to commit a terrorist act if so directed. These countries also maintain diplomatic or quasi diplomatic institutions in the United States equally dedicated to these regimes. In addition, various subnational terrorist groups maintain infrastructures or have a presence within the country which could be utilized to facilitate a terrorist act.

Indications are that the principal international terrorist threat within the United States emanates from several terrorist groups supported by state-sponsors of terrorism.

The following subnational terrorist groups are at the forefront of this threat:

Hizballah is a political, social and military organization headquartered in Lebanon that espouses an intense hatred for the United States and other groups or countries which do not support its ideology. An element within Hizballah employs international terrorism to achieve its goals. This group is very closely aligned with Government of Iran officials and the Iranian Revolutionary Guard. Hizballah has been responsible for numerous kidnappings of United States persons abroad.

The Japanese Red Army (JRA) is a Marxist-Leninist oriented terrorist group based primarily in Lebanon whose ultimate goal is world revolution of communism. The JRA is best known for its May 1972 attack at Lod Airport, Israel, in which 26 people were killed, including 16 Puerto Rican citizens on a pilgrimage to the Holy Land. On April 12, 1988, the New Jersey State Police arrested JRA member Yu Kikumura after three bombs were found in his vehicle. Kikumura subsequently pled guilty to various Federal charges and has been sentenced to 30 years imprisonment.

Since February 3, 1987, domestic terrorist groups have accounted for 16 terrorist incidents within the jurisdiction of the United States. At present, the principal domestic terrorist threat within the United States most likely emanates from the following areas:

Violent Puerto Rican separatist groups, such as the EPB-Macheteros and the Organization of Volunteers for the Puerto Rican Revolution (OVRP), which are dedicated to total Puerto Rican independence and are waging what they perceive as a terrorist war against United States imperialism.

Various right-wing groups such as the Aryan Nation and Sheriff's Posse Comitatus which espouse violent, racist, and anti-government philosophies.

Despite arrests and successful prosecutions throughout the spectrum of the various philosophies, domestic terrorist incidents continue to occur because perceived social and political conditions, which are often claimed as the basis for these groups' activities, have not changed to their satisfaction.

On March 10, 1989, the FBI's San Diego Field Office immediately responded and set up a command post at the scene after an explosive device detonated and destroyed a vehicle driven by Sharon L. Rogers, wife of Captain Will Rogers, III, Commander of the USS Vincennes, the United States Naval vessel which shot down the commercial Iran Air flight on July 3, 1988. Mrs. Rogers escaped from the vehicle unharmed.

The FBI has primary jurisdiction in the investigation of this matter and is directing this investigation in cooperation with the Naval Investigative Service, Bureau of Alcohol, Tobacco and Firearms, California Highway Patrol, San Diego County Sheriff's Office, and other Federal, State, and local agencies.

An explosives examiner and a laboratory photographer were dispatched from FBI Headquarters on the day of the occurrence. A preliminary finding of the explosives examiner is that the device was a pipe bomb which had been taped to the undercarriage of the vehicle in close proximity to the catalytic converter.

The bombing of the Rogers' vehicle in La Jolla, California, has been designated a major case investigation and is being given the highest priority associated with such FBI investigations. Information continues to be generated as a result of neighborhood and crime scene interviews, and numerous leads of unknown value are being generated by telephone calls made to FBI field offices. The FBI's investigation into this matter is continuing.

QUESTION: What is the status of the investigation of the crash of Pan American Flight 103 in Lockerbie, Scotland?

ANSWER: On December 21, 1988, when Pan American flight 103 crashed in Lockerbie, Scotland, the FBI offered forensic and identification services to the British authorities. Since December 28, 1988, when British authorities announced that it had been definitely determined that the destruction and break-up of Pan Am flight 103 was caused by an explosive device, the FBI has committed extensive resources to this international criminal investigation.

FBI forensic examiners have assisted British investigators in the forensic examination and reconstruction of the aircraft. FBI fingerprint examiners were sent to Lockerbie to assist in the identification of the bodies. The FBI has agents involved in a liaison capacity in Scotland and in West Germany. British authorities detailed observers to the FBI's Washington Metropolitan Field Office and at the present time a Scottish police officer is still in Washington, D.C.

The cargo container which housed the bomb has been specifically identified and all luggage in that container is in the process of being identified in Scotland. It has been determined that the bomb was contained in a radio cassette recorder and placed in the cargo hold of the aircraft, either in Frankfurt or London by person(s) unknown at this time. On March 17, 1989, it was announced in Lockerbie that the type of baggage which contained this radio cassette player had been established. This will allow the Lockerbie investigation team to take a further step forward in the inquiries they are making, both on a national and international basis.

This international investigation which involves the FBI, New Scotland Yard, and Scottish Police authorities, is being handled as a major case investigation and is being given the priority associated with such an investigation.

Since its inception, this investigation has been conducted in complete cooperation with British and German law enforcement agencies. The resources of the United States Government are being fully utilized and this includes both the law enforcement and intelligence communities. The FBI, as the lead investigative agency for the United States Government, is coordinating the investigation in the United States. FBI jurisdiction in this matter is derived from the Omnibus Diplomatic Security and Antiterrorism Act of 1986 which made it a violation of United States law to assault, attempt to murder, murder or conspire to commit any of these acts against a United States National abroad.

All agencies involved in this complex international investigation, both here in the United States and abroad, are committed to dedicating whatever resources are necessary to resolve this case and bring those responsible to justice. No time frame has been established for the resolution of this case.

QUESTION: Are we seeing a resurgence in terrorist activity targeted at the United States and United States nationals overseas?

ANSWER: United States nationals traveling abroad and official United States foreign establishments continue to be targeted by international terrorists. The actual United States Department of State statistics are as follows:

Worldwide Incidents Involving United States

Year	All Incidents	Incidents Involving U.S. Nationals/Interests
1985	812	177
1986	774	204
1987	832	149
1988	856	194

As this table illustrates, there was a thirty percent increase in 1988 over the total number of anti-United States terrorist incidents reported in 1987, by members of international terrorist groups outside the United States. Additionally, over the past four years, international terrorist incidents against United States nationals or interests, accounted for an annual average of approximately 22 percent of all terrorist incidents worldwide.

It is projected that United States nationals and interests abroad will continue to be prime targets of international terrorist attacks. The FBI must continue to apply aggressive counterterrorism initiatives to counter the real and increasing terrorism threat at home and abroad.

QUESTION: Do you feel your resources are sufficient to respond adequately to the threat of international terrorism? Is its prevention an achievable goal?

ANSWER: The current level of resources are sufficient to address both domestic and international terrorism. While the actual budgetary figures regarding the International Terrorism Subprogram are classified, in 1988 and 1987, this program area overused its resources by 14 percent and 19 percent, respectively. This trend is expected is continue through 1989. At the same time, the Domestic Terrorism Subprogram has not been using its funded resources in full.

From the FBI's perspective, prevention of violent terrorist attacks is best addressed by a steady commitment of resources, enhanced counterterrorism training, efficient use of an increasingly effective intelligence base, exchange of terrorist-related intelligence information among United States and foreign intelligence agencies, and the persistent pursuit of terrorists charged with violation of United States statutes.

These Counterterrorism Program initiatives are proving effective. Within the last five years, the FBI and local law enforcement agencies have been able to prevent 49 terrorist incidents within the jurisdiction of the United States that would have resulted in significant property damage and loss of life. Any relaxation of aggressive counterterrorism initiatives may result in an upturn in violent terrorist activity in the United States.

Training

QUESTION: In 1985, the DEA relocated its agent training from the Federal Law Enforcement Center in Glynco, Georgia, to the FBI Academy in Quantico, Virginia. Is the Quantico training facility adequate given the increased number of agents provided by anti-drug legislation in recent years? Are you able to meet your training requirements? How about those of State and local law enforcement? Do you see a need for an additional training facility? Would it be possible to expand the present FBI Academy? Are your present facilities secure for computer operation and recordkeeping? If not, what would be your requirements and recommendations for meeting this need?

ANSWER: A combination of factors to include limited lodging facilities, travel monies, and the relocation of DEA's training Program to the FBI Academy in 1985 have greatly affected the FBI's ability to meet internal and General Law Enforcement Training (GLET) training requirements. Since 1983, there has been a 34-percent decline in the number of training courses offered at the FBI Academy for local, county, and State police officers.

An analysis of FBI and GLET training needs through 1995 projects that, on the average, a minimum of 90 percent of the FBI Academy space will be required annually to meet FBI training obligations. This projection was based on our historical commitment to upgrade the professionalism of local law enforcement, but more important, to address the continuing developmental needs of our agent workforce. It is estimated that by 1995, 70 percent of the FBI's agent complement will have 11 years or less of experience, of which, 37 percent will average five years or less. These projections do not include any enhancements or overall growth in the Special Agent workforce. As such, if the FBI is to replace a substantial portion of its Special Agents in the period of heaviest attrition, a substantial commitment of FBI Academy resources must be available to meet an aggressive hiring plan.

In order to accommodate DEA training, the FBI has, in the past, increased the number of often costly regional schools and off-site facilities in the Quantico and Northern Virginia area. During the time period of 1985 through 1988, it is estimated that $1,000,000 was expended for student off-site lodging. The opening of the third dormitory at the FBI Academy should help with this problem. In addition to incurring increased lodging costs, the FBI, as previously noted, was unable to increase the documented need for advanced in-service training and also unable to meet GLET training priorities.

Based on the above cited factors, FBI and DEA officials are in agreement that the only possible solution to this training void is the acquisition of additional training space under the auspices of DEA. DEA is currently exploring with the U.S. Marine Corps the possibility of acquiring additional space at the Quantico base. The procurement of such space would allow for joint in-service training sessions without inhibiting our efforts to enhance investigative coordination and cooperation.

In regard to the possibility of expanding the present FBI Academy, the existing Academy's 400 acres of space is at capacity. There is no existing space for additional staff or storage. Any need to house additional students could only be accomplished by cancelling classes that have already been scheduled or proposed. Expansion of the existing FBI Academy is not feasible without a significant enlargement of the utility distribution systems (electricity, water, and sewage). Both the water and sewer systems are currently at capacity. The primary electrical distribution system will be beyond capacity during the coming hot, humid summer. The FBI Academy's central plant, where water is chilled and heated for space cooling and heating, is at capacity too, thus further limiting the possibility for expansion of the FBI Academy.

In regard to computer security and recordkeeping, computers maintained within specific units at the FBI Academy are considered secure.

Enhancements

QUESTION: This budget proposes increased resources for two programs -- Automated Data Processing and Telecommunications (ADPT) and Technical Field Support and Equipment (TFSE). However, I've noticed that you have also proposed reductions to these same programs. This seems a little unusual. Why are you asking for resources for Digital Voice Privacy (DVP) and cutting resources for DVP at the same time?

ANSWER: The increase of 40 positions and $13,631,000 for the ADPT Program is offset, in part, by a reduction of $7,000,000 to base funding available for procurement of Field Office Information Management System computer workstations. The proposed reduction is a separate action to stretch out acquisition of these workstations consistent with current year spending patterns. The increases of 57 positions and $9,695,000 for the TFS&E Program is offset, in part, by a reduction of $4,342,000 to base funding available for procurement of digital voice privacy radio equipment. The proposed reduction is a separate action to stretch out acquisition of these radios, also consistent with current year spending patterns.

Fugitives

QUESTION: There was considerable publicity last year about a "turf war" between the Marshals Service and the FBI over the pursuit of fugitives. Actually, I understand the two agencies have been in dispute over fugitive apprehension responsibilities for the last decade if not longer. Nevertheless, in an effort to resolve the problem, Attorney General Meese identified the specific responsibilities of each agency and made the Associate Attorney General the "referee" for deciding any jurisdictional questions that might arise. How many specific disputes have been referred to the referee and how were they resolved?

ANSWER: Since the approval of the new fugitive apprehension policy, several questions have been referred to the Office of the Associate Attorney General. Initially, the principal areas of concern addressed by the Associate's Office involved interpretations of the policy itself. At a meeting with the heads of the FBI, DEA, and USMS on November 8, 1988, several questions relating to respective agency jurisdiction over foreign and domestic fugitives were resolved. For example, it was agreed that the FBI will not seek a Federal Unlawful Flight to Avoid Prosecution (UFAP) warrant on a fugitive being sought by the USMS pursuant to its jurisdiction under the policy, and that the USMS correspondingly will not pursue a fugitive being sought by the FBI under a UFAP warrant. Further procedures were agreed upon at that meeting for the handling of international fugitive matters. Since that time, several questions relating to international fugitive investigations have been discussed with the Associate's Office by the FBI and USMS, but there have been no disputes referred for resolution.

QUESTION: Has the action taken last year by Attorney General Meese ended the long standing friction between the two agencies? If not, what needs to be done?

ANSWER: As indicated in the previous answer, there have been no disputes over fugitives referred to the Associate Attorney General for resolution by either the FBI or USMS. The two agencies are continuing to implement the new fugitive policy. The August 11, 1988, policy has proved to be a satisfactory means of resolving issues regarding fugitive apprehension responsibilities. A working group has been established in an effort to provide a continuing vehicle for dealing with questions as they arise, with the goal of establishing a clear and coordinated policy in domestic and international fugitive investigations. In the near future, this working group will be discussing procedures for conducting investigations of foreign fugitives; the specific method by which disagreements are resolved when two or more Federal agencies are seeking these fugitives; whether a request from a United States Attorney or officer of the court in a particular case takes precedence over the jurisdictional allocation in the policy statement; and USMS's involvement in seeking the apprehension of State or local fugitives who travel interstate for whom no Federal warrant is outstanding.

QUESTION: Will the procedures established to resolve disputes be retained by your administration? If not, what mechanisms do you believe are needed to resolve disputes?

ANSWER: The Attorney General has endorsed the policy established by Attorney General Meese. I believe it will continue in its present form.

QUESTION: In carrying out its fugitive apprehension responsibilities, what happens when a fugitive leaves the United States?

ANSWER: The FBI's Legal Attaches, historically, have been the FBI's representatives stationed in American Embassies abroad and are responsible for liaison between the FBI and foreign governments, law enforcement and intelligence agencies. FBI Fugitive investigations in foreign countries are coordinated by our Legal Attaches with foreign governments who initiate fugitive investigations upon request from the Legal Attaches. Once a fugitive has been located in a foreign country, a request for a provisional arrest warrant is filed by the Department of Justice through the Department of State with the foreign government in accordance with the terms of the treaty, if one exists, between the United States and the host country. Depending on the nature of the fugitive investigation, a request for extradition or an informal deportation is initiated with the foreign government to ensure the fugitive's return to the United States. Many countries refuse to extradite their own citizens. In those instances where extradition or deportation is not possible, efforts are initiated through the Department of Justice, depending on the treaty between the United States and the country in question, to have these individuals prosecuted in their home country for the criminal violations committed in the United States.

Office Consolidations

QUESTION: Last summer, the Attorney General submitted a reprogramming request to consolidate the Butte, Montana field office into the Salt Lake City Field Office. The committee denied the request and continues to be concerned with the impact this consolidation will have upon the local economy in Butte and law enforcement in the immediate area. Will you be resubmitting a reprogramming request to facilitate this consolidation?

ANSWER: A notification of the recommendation to consolidate the Butte Field Office into the Salt Lake City Field Office was transmitted to Congress on April 17, 1989. The Butte office will be designated as a Resident Agency and report to the Salt Lake City Field Office.

QUESTION: What were the overriding circumstances leading to your decision to move ahead with the Butte consolidation?

ANSWER: Prior to reaching a decision with regard to the consolidation of the FBI field office located at Butte, Montana, the FBI evaluated many considerations. The following are considerations which militate in favor of relocating the field office and contributed to the decision to move ahead with the consolidation:

Critical Mass - Critical mass relates to the nucleus of agents necessary to sustain a field office. The Butte Field Office currently can justify the maintenance of a staff of five agents which includes the management staff. The minimal agent complement maintained in Butte is insufficient to sustain or justify the presence of certain necessary investigative and/or support positions; therefore, critical mass cannot be maintained. Unlike other FBI field offices, Butte key personnel and specialists are widely dispersed. The Salt Lake City Field Office, by contrast, currently accommodates all key investigative and/or support positions.

Inappropriate Location - Butte is inappropriately located to address either of the Field office's two major crime problems. They are: White Collar Crime centered around Boise, Idaho; and Crime on Indian Reservations centered around Billings, Montana. Further, the U.S. Attorneys Offices and Federal Judiciary are based in these latter two locations while Butte is host to neither the Federal Judiciary or significant Federal presence other than the FBI.

Improved Service - Inasmuch as there will be no diminution of investigative resources in Montana and Idaho, it is anticipated that consolidation will improve FBI services to those States in terms of emergency response. Examples of such improvement are a more highly trained and available Special Weapons and Tactics (SWAT) Unit and enhanced investigative support and technical assistance. In addition, local law enforcement may benefit from a full-time training coordinator and a larger more flexible pool of police instructors.

Access - Limited commercial air transportation restricts both investigative/support travel and inter-field office mail. All air travel between Montana and Idaho requires a Salt Lake City connection.

Economy of Scale - Consolidation should enhance both effectiveness and efficiency through combining files and indices, part-time coordinator and support functions, and technical and support equipment. This action will permit the combining of many part-time activities in each field office into more efficient and effective single or full-time functions.

Savings - Consolidation will realize a savings of approximately $1.19 million over five years.

After carefully considering all of the available information, the Director decided that consolidating our Butte and Salt Lake City Field Offices would enhance the FBI's ability to perform its mission. It was, therefore, recommended that the Attorney General approve this action. This proposed reorganization involves only field office administrative and support components and will in no way diminish the investigative resources assigned to this territory. By combining two small offices into a single entity, the FBI will be able to more effectively coordinate a rapid response from a single field office, take advantage of staffing and equipment benefits, and utilize centralized investigative program management.

QUESTION: Early last month, subcommittee staff were made aware of the FBI's proposal to consolidate the Savannah Field Office into the Atlanta Field Office. I understand a compelling case of increased efficiency and effectiveness was made. Have you heard any opposition from the Georgia delegation to this proposed consolidation?

ANSWER: In January 1989, representatives from the Atlanta Field Office and the FBI's Office of Program Evaluations and Audits (OPEA) briefed members of the Georgia congressional delegation on the proposed consolidation.

The Savannah-Atlanta reorganization will take place entirely within the State. OPEA interviews with Federal prosecutors, the Federal judiciary, and State and local law enforcement officials, indicated no substantial opposition to the FBI's proposed consolidation of the Savannah and Atlanta Field Offices.

QUESTION: Could you please briefly outline the pros and cons of the Savannah/Atlanta consolidation?

ANSWER: The Savannah, Georgia, Field Office was established in December 1939. Issues regarding the Field Office have proliferated since 1965 when the Columbia, South Carolina, Field Office was created and a South Carolina Federal judicial district was transferred from Savannah to this new office. As a result, the Savannah Field Office experienced a significant reduction in work, staffing, and influence.

This consolidation proposal, whereby the Savannah Field Office will be designated as a Resident Agency and report to the Atlanta Field Office, involves only administrative and support components, and in no way will diminish investigative resources assigned to this territory. Benefits of consolidation include recaptured staff resulting from the elimination of duplicative management functions and improved service to the State in terms of emergency response. Consolidation will also strengthen the FBI's investigative posture and improve support services.

Atlanta is the largest city in Georgia, providing a major transportation hub and is the seat of Federal and State government representatives, business and commerce. Over a five-year period, consolidation is projected to save the FBI approximately $358,847. From the FBI's perspective, there are no perceived disadvantages associated with this consolidation.

All FBI field offices are subject to continuous internal review to ensure effective and efficient operations; this assessment is a continuation of this process. The benefits of consolidation are outlined below.

Recaptured Staff - Combining the two field offices will eliminate duplicative coordinator positions responsible for handling police training, applicants, bank robberies, narcotics, and other special functions. As a result, the equivalent of approximately eight agent workyears will be recaptured and returned to investigative assignments.

Improved Service - Consolidation will improve FBI service to the State in terms of emergency response. Examples of such are a more highly trained and responsive SWAT Unit and enhanced investigative support and technical assistance. In addition, local law enforcement will benefit from a larger more flexible pool of police instructors.

Strengthened Investigative Posture - Consolidation of the two field offices will strengthen the FBI's investigative posture, resulting in the ability to more effectively coordinate a rapid response, take advantage of coordinated staffing and equipment benefits, as well as benefit from centralized investigative program management.

Support Considerations - Atlanta has encountered difficulty attracting and maintaining support employees due to uncompetitive salaries and an undesirable office location. In 1988, Atlanta had 15 resignations; Savannah had none. The creation of a resident office in Savannah to provide communication functions, house pending files, typing, and other specialized support services would increase the operational effectiveness of the consolidated field office.

Location - Atlanta's location is optimal inasmuch as it dominates the State of Georgia in terms of population, Federal and State government presence, transportation, business, and commerce.

Savings - Consolidation is projected to save the FBI approximately $358,847 over a five-year period with additional increased savings projected beyond that period.

After carefully considering all of the available information, the Director decided that consolidating our Savannah and Atlanta Field Offices would enhance the FBI's ability to perform its mission. This proposed reorganization involves only field office administrative and support components and will in no way diminish the investigative resources assigned to this territory. By combining two offices into a single entity, the FBI will, among other benefits, be able to more effectively coordinate a rapid response from a single field office, take advantage of staffing and equipment benefits, and fully employ centralized investigative program management.

Accordingly, on April 11, 1989, the reorganization proposal was transmitted to the Congress.

QUESTION: How many States operate out of one field office?

ANSWER: There is generally one State operating out of each FBI field office. However, there are several States which contain more than one field office. Furthermore, there are several field offices which cover more than one State.

States which contain more than one field office include: California and Texas which contain four field offices each; Florida and New York which contain three offices each; and Pennsylvania, Virginia, Illinois, Georgia, and Alabama which contain two field offices each.

Field offices which cover more than one state include the Boston Field Office which covers the States of Massachusetts, Maine, and Rhode Island; the Butte Field Office which covers both Montana and Idaho; the Albany Field Office which covers an area of New York and Vermont; the Baltimore Field Office which covers both Maryland and Delaware; the Denver Field Office which covers Colorado and Wyoming; the Kansas City, Missouri, Field Office which covers Kansas and areas of Missouri; the Minneapolis Field Office which covers Minnesota, North Dakota, and South Dakota; the Omaha Field Office which covers both Nebraska and Iowa; the Pittsburgh Field Office which covers both Pennsylvania and West Virginia; and the Washington Metropolitan Field Office which covers the Washington Metropolitan area and selected locations in Virginia.

Relationship Between the FBI and DEA

QUESTION: Since 1982 the DEA has reported to the Attorney General through the Director of the FBI. What this means in practice has never been clear to those outside the two agencies. Please explain how this relationship works. For example, does the FBI Director make adjustments to DEA resource requests, revise DEA investigative priorities, or become involved in oversight of major cases?

ANSWER: The Director of the FBI does not review the day-to-day operations of DEA. The Director is occasionally consulted by the Administrator of DEA regarding general policy issues. The Director does not adjust DEA's resource requests, nor does the Director become involved in the oversight of major cases, unless the FBI is also a participant.

QUESTION: Is consolidation of the FBI and DEA still an issue being considered? What are the pros and cons of such a merger?

ANSWER: On April 27, 1987, then Attorney General Edwin Meese III announced a management plan that would enhance DEA/FBI joint operations, but which would not merge the FBI and DEA into a single organization. The mandate of the Director of the Office of National Drug Control Policy to report by January 15, 1990, recommendations concerning changes in the organization of Federal agencies engaged in drug law enforcement may cause a revisiting of the merger issue, but there are no current plans to pursue a merger. The greatest advantage of a merger is the establishment of one management system in the Federal Government for drug investigations under Title 21. Drug trafficking encompasses a multitude of ancillary criminal activities which the diversified expertise and mission of the FBI is ideally suited to pursuing through all the multiple infrastructures of drug trafficking organizations. The disadvantages of merger primarily concern administrative matters: Civil Service (DEA) v. Excepted Service (FBI); placement of personnel; logistic integration of facilities, resources and record and intelligence systems.

Additionally, because of the magnitude of the nature of the drug problem, a single, separate, agency whose sole purpose is to focus on the anti-drug effort of this country could not be attainable if such a merger took place.

QUESTION: FBI officials have stated that their investigations of groups are substantially different than those conducted by the DEA because they are generally longer-term and designed to bring down entire organizations at one time through such means as RICO cases. Do you agree that the FBI's investigations are substantially different than those of DEA? If so, should the DEA pursue at least some investigations with the same strategy as the FBI? If not, is there a rationale for the FBI's involvement in drug law enforcement other than to increase the resources devoted to drug law enforcement?

ANSWER: The FBI's National Drug Strategy (NDS) mandates the use of resources to conduct sustained investigations of major multi-jurisdictional drug trafficking organizations with the intention of dismantling trafficking networks, arresting their leadership, and seizing and forfeiting their ill-gotten gains. This approach is based on the FBI's experience and expertise developed through investigations of traditional organized crime and the realization that the neutralization of organizations yields the greatest and most lasting results. This was part of former Attorney General William French Smith's stated reasons for delegating concurrent criminal drug law enforcement jurisdiction to the FBI in January 1982. Attorney General Smith stated the FBI was to focus on complex conspiracy investigations, recognizing the FBI's areas of expertise in the use of electronic surveillance, undercover operations, informants, physical surveillance, other complex investigative techniques, and, in particular, financial analysis.

DEA has a broader mandate than the FBI for criminal drug law enforcement. DEA targets major drug violators and their organizations and emphasizes seizing their illicit drugs and assets. Also, DEA conducts drug investigations in foreign countries, coordinates State and local efforts, investigates the diversion of legitimate drugs in the illicit market, develops drug intelligence analyses and publicizes appropriate strategic assessments. The FBI's investigative strategy, as embodied in its NDS, should be viewed as complementing the law enforcement efforts of DEA and other agencies.

Equipment

QUESTION: In executing the Bureau's 1989 budget, you are reportedly reprogramming $60 million from planned

equipment purchases into personnel accounts. In other words, you are deferring equipment for the future so that you can pay your employees now. What happened to make this kind of major reprogramming necessary? How will deferring this new equipment affect the Bureau's ability to do its job? How will it affect the Bureau's ability to carry out its counterintelligence duties?

ANSWER: The response to these questions is classified and has been provided separately to the Subcommittee.

Engineering Research Facility

QUESTION: The Bureau is now constructing an Engineering Research Facility (ERF) at Quantico, Virginia, as a consolidated center to develop and provide the customized gear that is needed to fight crime and espionage in today's high-tech environment. The first module of the ERF is due to be complete in the summer of 1989. However, two more modules, each costing $16 million, must be completed before the ERF is fully mission-capable. The Bureau's FY 1990 budget contains no funds for this facility. What is the purpose of the Engineering Research Facility at Quantico? When will it be completed? Why are there no funds in your FY 1990 budget to complete this facility? What impact will delaying the completion of this facility have on the Bureau's ability to do its job in a high-tech environment?

ANSWER: The primary purpose for constructing the Engineering Research Facility is to hasten the establishment of the FBI benchwork capability vitally needed to reduce, from months or years to weeks, the time required to produce custom electronic devices used to support intelligence and criminal investigations. Such a capability is absolutely essential when, as is often the case, the window of opportunity for implementing such devices is small and time critical. Without this capability, the FBI would continue to rely on private sector contractors, a lengthy and more costly process. Internal FBI studies have shown that, on contracts for limited production equipment, only 45 percent of the cost is for labor and materials, and the remaining 55 percent is for services such as profit, overhead, and administrative expenses that are of no direct benefit to the FBI. The ERF will allow the FBI to avoid most of the costs attributable to this 55 percent.

Moreover, the ERF will provide opportunities for FBI staff to markedly improve their technical and professional capabilities. When our engineers serve as practitioners rather than contract monitors, experience and enhanced knowledge, skills and abilities accrue to the FBI. Otherwise, experience accrues to and remains with the contractor upon task completion.

ERF-Pod A is projected to be completed in the summer of 1989. The Administration requested funding for ERF-Pod B in the 1988 budget request to the Congress. However, Congress did not approve the additional resources to construct ERF-Pod B. Due to budget constraints, only Pod A of the original plan for the facility will now be completed.

Washington Field Office

QUESTION: What is the status of the relocation of the Washington Metropolitan Field Office?

ANSWER: The FBI has expanded the boundaries for the relocation of the Washington Metropolitan Field Office (WMFO) (delineated area). Current technology now permits the adjustment of the delineated area to an area more conducive to addressing the requirements of the entire field office while maintaining our foreign counterintelligence mission capabilities.

Although this matter has not been resolved, the expansion of the delineated area provides additional potential relocation sites.

A lease prospectus for the relocation of the WMFO has been prepared by the National Capital Region, General Services Administration (GSA) and is currently under review within the Administration.

Deployment of Agents

QUESTION: Please supply a chart displaying the deployment of FBI agents by location as of September 30, 1988, the allocation of agents by location for FY 1989, and the number of agents on-board by location as of December 31, 1988.

ANSWER: The response to this question is classified and has been provided separately to the Subcommittee.

Texas Site Acquisition

QUESTION: It has been brought to the Subcommittee's attention that there is a facility near Houston, Texas that may be of interest to the FBI. Is the Department of Justice interested in acquiring this site?

ANSWER: In a letter dated March 27, 1989, Assistant Attorney General Thomas M. Boyd, Office of Legislative Affairs, informed Congressman Lamar Smith that the acquisition of the property does not meet the priorities of the President's budget and, therefore, is not feasible.

Foreign Counterintelligence

QUESTION: Please provide for each of the last five fiscal years, the following numbers regarding agents, support and total workyears for the Foreign Counterintelligence Program.

a. The number requested
b. The number appropriated
c. The actual number utilized
d. The difference between items b and c in terms of both numbers and percentage.

ANSWER: The response to these questions is classified and has been provided separately to the Subcommittee.

Reception and Representation Expenses

QUESTION: The FBI has authority to utilize up to $45,000 for official reception and representation expenses.

a. How much of that authority was used in FY 1988 and please provide a listing of the approved expenditures.

ANSWER: During 1988, the FBI utilized the full authority of $45,000. FBI Headquarters officials were reimbursed $21,250.69 in reception and representation expenditures, $10,410.51 was reimbursed to Legal Attache personnel overseas and $13,338.80 to Field Office managers. The reception and representation funds were expended as follows:

Official Receptions	$20,775.29
Liaison Dinners/Luncheons	12,409.26
Refreshments at Functions	5,122.26
Mementos	6,693.19
Total	$45,000.00

b. Is $45,000 considered sufficient? If not, why?

Yes. The current official reception and representation authority of $45,000 is sufficient to meet the needs of the FBI.

FBI Aircraft

QUESTION: Please supply a chart displaying the deployment of every FBI aircraft by location showing the type of aircraft, the function of the aircraft, how it was acquired, the year received, date of manufacture, and the cost.

ANSWER: The response to this question is classified and has been provided separately to the Subcommittee.

New York Demonstration Project

QUESTION: How many employees have received the new mobility payment?

ANSWER: As of March 24, 1989, 73 employees have received the mobility payment.

QUESTION: Please provide the number of employees receiving the new mobility payment by their occupational series.

ANSWER: As of March 24, 1989, 62 special agents (occupational series 1811) and 11 intelligence aides (occupational series 134) have received the mobility payment.

QUESTION: What is the basis of making mobility payments to other than Agents?

ANSWER: The Intelligence Authorization Act of 1989 (Public Law 100-453) authorizes the FBI to make lump-sum payments to personnel upon directed assignment to the New York Field Office from another geographical location. Based on a review of the FBI's administrative procedures or the service agreement signed by certain employees, the FBI determined that, in additional to Special Agents, the following employees were also subject to directed transfer: intelligence aides, accounting technicians, electronic technicians, language specialists, investigative assistants, and automotive maintenance technicians.

QUESTION: If the employee fails to complete the 3-year contract, does the mobility payment have to be repaid?

ANSWER: The mobility payment will be paid to eligible employees who sign a three-year service agreement and establish their primary residence within the designated geographic area. Employees who violate the agreement will be required to repay the entire mobility payment to the FBI. The terms of the service agreement may be waived or amended by the FBI in appropriate circumstances, for example, upon a management directed transfer out of the New York Field Office.

QUESTION: The mobility payment allows the employee to live within a 50-mile radius of the City of New York. How far is the FBI New York Field Office from the farthest boundary of the City of New York?

ANSWER: The boundaries of the New York office extend to the south to the tip of Staten Island (about 19 miles), to the north to the end of Westchester County (about 14 miles), to the east to the end of Nassau County (about 15 1/2 miles) and to the west to the Hudson River (about 1/2 mile).

However, you should be aware that the New York Field Office is responsible for covering territory beyond the boundaries of New York City, e.g., to the tip of Long Island which is over 100 miles from the office.

QUESTION: Please provide a listing by ZIP code of where the employees receiving the mobility payments reside in

the designated areas and how far that is from the City of New York.

ANSWER: Attached is a list of those counties or ZIP Codes, which generally fall within a 50-mile radius of the City of New York. Each request by an employee for the mobility payment is reviewed to determine if they meet the 50-mile radius rule.

NEW YORK OFFICE DEMONSTRATION PROJECT

ALL AREAS OF THE FOLLOWING COUNTIES ARE APPROVED FOR RESIDENCE

NEW YORK	NEW JERSEY
Bronx	Bergen
Kings	Essex
Nassau	Hudson
New York	Middlesex
Queens	Monmouth (Monmouth is a border county; however,
Richmond	Morris all zip code areas are approved)
Rockland	Passaic
Westchester	Somerset
	Union

Zip Codes Approved for Residence in Border Counties

DUTCHESS COUNTY NEW YORK	ORANGE COUNTY NEW YORK	PUTNAM COUNTY NEW YORK	SUFFOLK COUNTY NEW YORK	FAIRFIELD COUNTY CONNECTICUT	HUNTERDON COUNTY NEW JERSEY	MERCER COUNTY NEW JERSEY	OCEAN COUNTY NEW JERSEY	SUSSEX COUNTY NEW JERSEY	WARREN COUNTY NEW JERSEY
12508	10901	10509	11701-12	06883	07830	08502	07719	07418	07820
	10910-12	10512	11714-26	06880	07831	08504	07727	07419	07821
	10914	10516	11728-62	06490	07865	08512	07728	07422	07825
	10916-18	10524	11765	06612	07882	08520	07731	07428	07831
	10921	10537	11767-77	06604	07979	08525	08514	07439	07838
	10922	10541	11779-85	06605	08525	08528	08527	07460	07840
	10924-26	10566	11787	06606	08551	08534	08701	07461	07844
	10928	10579	11788	06611	08558	08540	08720	07462	07846
	10930		11790	06432	08801	08544	08723	07822	07860
	10933		11791	06430	08809	08550	08738	07826	07863
	10940		11794-99	06897	08822	08553	08742	07848	07865
	10950			06829	08826	08555		07871	07874
	10953			06896	08827	08558			07880
	10958			06877	08829	08619			07882
	10959			06810	08833	08648			
	10969			06811	08853	08690			
	10973-75			06875	08858	08691			
	10981			06876	08868				
	10987				08870				
	10988				08876				
	10990				08885				
	10992				08887				
	10996				08888				
	10998				08889				
	12518								
	12520								
	12550								
	12575								
	12577								

QUESTION: Are employees other than Agents, eligible for retention payments? If so, who and why?

ANSWER: The Intelligence Authorization Act of 1989 (Public Law 100-453) authorizes the FBI to make periodic payments to New York Field Office employees who are subject by policy to directed transfer. The amount authorized cannot be less than 20 percent nor more than 25 percent of the base pay of the employee. The FBI and the Office of Personnel Management agreed that the retention payment should be 25 percent of base pay.

Based on a review of the FBI administrative procedures or the service agreements signed by certain employees, the FBI determined that, in additional to special agents, the following groups were subject to directed transfer:

intelligence aides, accounting technicians, electronic technicians, language specialists, investigative assistants, and automotive maintenance technicians. Therefore, all special agents and about 240 of the 790 support personnel receive the retention allowance of 25 percent of their base pay.

QUESTION: Do the employees receiving the mobility payment also receive the retention payment?

ANSWER: Yes. Any eligible employee transferred into the New York Office can receive the mobility payment if they agree to live within approximately 50 miles of the New York Field Office for three years. While assigned to the New York Field Office, they and all eligible employees who may not have received the mobility allowance, receive the retention allowance of 25 percent of base pay.

QUESTION: What is the average retention payment?

ANSWER: As of January 30, 1989, for the 1,387 employees covered by the New York Demonstration Project, the average bi-weekly retention pay was $384.86. Specifically, the average bi-weekly retention pay for the 1,129 special agents was $414.88; for the 251 support employees covered by the project, the average bi-weekly retention pay was $253.40; and for the seven Wage Board grade employees covered by the project, the average bi-weekly retention pay was $256.94.

QUESTION: Does an employee receiving the retention payment have to live within the same geographic area as those receiving the mobility payment? If no, why?

ANSWER: No. The legislation does not require that those receiving the retention payment must live in a specified area. The intent of the retention payment is to encourage those currently assigned to the New York Field Office to remain in that office, thereby reducing the resignation rate or the number of employees seeking transfer out of the New York Field Office. If this is the result of this payment, the New York Field Office will also benefit by retaining experienced agents who have the institutional knowledge critical to our complex investigations. This gives us the continuity we are seeking.

It is noted that the language in the law authorizing the mobility payment does not mandate that the employee live in a specified geographical area. However, another purpose of the New York Demonstration Project is to have agents and other eligible personnel reside nearer to the office to reduce commuting time and to make them more responsive in emergencies. Therefore, the requirement that the employee live in a specified geographical area was made a condition of receipt of the mobility allowance.

QUESTION: Am I correct that employees receiving these payments reside in, and travel through other FBI ield

office turf, such as Newark? What is the reaction of your Agents in Newark to the special consideration given the personnel in the New York Office?

ANSWER: Employees assigned to the New York Field Office do live in areas covered by other field offices, e.g., Newark or Philadelphia. We have heard from various Newark employees who, though supportive of the enhancements paid to New York Field Office personnel, are angry that they are not receiving similar benefits. Although the New York Field Office had experienced the most severe operational difficulties demonstrated, in part, by its high turnover of employees and its recruitment problems, other FBI offices, like Newark, are experiencing similar difficulties.

QUESTIONS SUBMITTED BY SENATOR WARREN RUDMAN

New York Differential

QUESTION: The Intelligence Authorization Act of 1989 provided for the establishment of a five-year demonstration project at the New York field office of the FBI designed to retain personnel, especially those involved in foreign counterintelligence activity. As I understand it, agents at the FBI office in New York will receive a cost of living differential of approximately $20,000 per year.

Neither the Intelligence Committee nor the Bureau consulted with this Committee prior to the establishment of this project, so we were unable to address the spending requirements of 1989. I can only assume that both the Intelligence Committee and the Bureau intended that the funds associated with the program are to be absorbed in 1989. What is the cost of the program in 1989 and 1990? Does the FBI intend to absorb the cost of the program in 1990? If the Bureau is expected to absorb the cost in 1990, would it make sense to suspend the demonstration project due to lack of funding?

ANSWER: In the Intelligence Authorization Act of 1988 (Public Law 100-178), Congress mandated that the FBI and the Office of Personnel Management (OPM) conduct a study to examine the effect of the cost of living in New York on the recruitment and retention of employees in the New York Field Office and on the operations of that office. According to this law, the report was prepared and recommendations were offered. The FBI and OPM found that, among other factors, the high cost of living and lack of available affordable housing in the New York City area was seriously affecting the New York Field Office's operations and its ability to staff the office. While these factors are detrimental to other Federal agencies, the FBI personnel requirements (particularly the policy of directed transfers into the New York area) make the FBI difficulties more serious.

Although several solutions for resolving the problems experienced by the New York Field Office were proposed, the FBI and OPM agreed on a compromise wherein New York difficulties would be addressed through a two-part plan, combining new legislation and existing authority. First, it was proposed that new legislation, in the form of a demonstration project, should be enacted to authorize the payment of retention and mobility allowances to employees subject to directed transfer. With regard to the remaining New York Field Office employees, the existing authority of special pay rates would be used to address staffing problems associated with those employee positions. This proposal was incorporated into the report that the FBI and the OPM submitted to Congress in the Spring of 1988.

In the Intelligence Authorization Act of 1989 (Public Law 100-453), the Congress incorporated language authorizing the FBI and OPM to conduct a demonstration project for the New York Field Office. The law authorized a lump-sum payment of up to $20,000 to personnel directed to transfer to the New York Field Office. In addition, the law permitted the payment of not less than 20 percent nor more than 25 percent of the base pay to employees who are assigned to the New York Field Office and are subject by policy to transfer. The FBI and OPM agreed that the relocation allowance would be $20,000 and the retention allowance 25 percent of base pay. It covers all FBI Special Agents assigned to the New York Field Office and approximately 240 of the 790 New York Field Office support staff. The projected 1989 cost of the project is $15.8 million; the cost for FY 1990 is $18.8 million. The FBI will be absorbing the cost of the project in 1989, 1990 and thereafter. The Bureau hopes that the project will be funded in 1990 and thereafter. In authorizing this demonstration project, Congress provided that the project "shall commence not later than ninety days after the enactment of this Act and shall terminate five years after such date unless extended by law." Also, the law provided that the FBI and the OPM shall jointly provide to the House of Representatives and Senate annual interim reports with a final evaluation concerning the results of the project. With this kind of congressional interest in the welfare of the personnel assigned to the New York Field Office and that office's operational difficulties (e.g., in the area of recruitment and retention of personnel) that are associated with the high cost of living, it would be hoped that the Congress would continue to fund this initiative. Suspension of the demonstration project would have a serious impact on the morale of the New York Office employees, their financial stability, and the operations of that office.

S&L Strike Force Supplemental Request

QUESTION: As part of his savings and loan (S&L) initiative, President Bush is expected to request about $40 million in FY 1989 and $50 million in FY 1990 for a Department of Justice strike force. Your statement indicates that a supplemental appropriation request will be submitted shortly requesting $23 million for the FBI for FY 1989. Will such supplemental have an offset to make it deficit neutral?

ANSWER: On March 24, 1989, the Administration transmitted a 1989 supplemental request for the Department of Justice for the Financial Institution Fraud Initiative of about $37 million in new budget authority. The FBI's share is about $23 million (H.Doc. 101-40). The President's message to the Congress included a proposal to offset the supplemental requests for discretionary programs.

QUESTION: Is the FBI already beginning to spend funds based on the expectation that such supplemental will be approved this year?

ANSWER: Since the President's announcement on February 2, 1989, the FBI has worked closely with the Department to devise tentative short-term and long-term implementation plans in anticipation of appropriated funding for the Financial Institution Fraud Initiative. Time is of the essence due to the magnitude of the current and anticipated criminal referrals and statute of limitations problems which could prevent successful criminal prosecutions. Although no funds have been expended to date on the basis of anticipated appropriations, detailed planning has and is occurring to provide the necessary FBI resources to affected problem areas nationwide as soon as possible upon funding. Short-term plans include a goal of 174 transferred agents in place by the end of 1989, of which 118 would be experienced investigators. The remaining 56 agents for 1989 would be new agent graduates of our Training Academy at Quantico. We have tentatively scheduled additional new agent classes beginning in May 1989 to backfill positions which would be vacated by the transferred experienced agents.

QUESTION: I realize that President Bush has proposed that the Justice Department be reimbursed by S&L insurance assessments. However, such a mechanism is not in place, and were the FBI to spend monies now, they would be deficit-spending, would they not?

ANSWER: As you have correctly indicated, there is no mechanism currently in place for the FBI to be reimbursed for investigative efforts associated with the S&L situation. Instead, the Administration has requested new budget authority of $23,010,000 in a 1989 supplemental for a direct appropriation to support the FBI's involvement in the Financial Institution Fraud Initiative.

QUESTION: Attorney General Thornburgh has been quoted as saying that the amount of recovery from S&L fraud cases may not amount to the cost of the prosecutions. Would you agree with this assessment?

ANSWER: It is clear from the Dallas experience that there will be a limited return on the investment. The imposition of fines and orders of restitution and judgments do not necessarily result in early cash returns either to the United States or the financial institutions. Although successful prosecutions may result in measurable long-term returns that would match or exceed the investment of resources, it is more important that severe penalties be imposed on those who have violated the trust that people expect from the managers of the nation's financial institutions. Without a vigorous deterrent effort, the already serious problem of fraud and insider abuse would only worsen.

A-76 Contracting-Out Savings

QUESTION: Your budget anticipates savings of 247 positions and $2.1 million from contracts with the private sector "in furtherance of the Administration's A-76 initiative." As I understand it, you anticipate contracting out positions in Records Management and Fingerprint Identification. I generally support the concept of contracting out government services. I wonder, however, if you anticipate any security problems from contracting out some of these functions? Are there any other functions you anticipate contracting out?

ANSWER: The FBI will conduct reviews of positions under A-76 which have been designated as commercial activities. The FBI has identified approximately 9,000 support positions or 66 percent of its total support staff that fall within the defined commercial categories and, therefore, are subject to Circular A-76 review. As set forth in Executive Order 12615, the FBI will review three percent of its total workforce or approximately 700 positions each year until all identified positions have been reviewed.

The decision as to specifically which 247 positions will be studied about contracting out was left to the FBI and, after careful deliberation, I have decided that the appropriate areas are within our Records Management and Identification Divisions.

The plan is to review contracting out the mail and file functions within the Records Management and Identification Divisions. Although outside contract personnel would have direct access to extremely sensitive and classified investigative information, this should not be a problem if sufficient controls are put into place.

The FBI has completed A-76 studies of the Warehouse/ Stockhandling activity at FBI Headquarters and the FBI

Library at Quantico, Virginia, and is expected to complete a similar study of the Facilities Management activities at both FBI Headquarters and at Quantico in May 1989. A total of 317 positions are involved and it is my judgement that these areas could be subjected to competitive bid by the private sector. In addition, in a recent survey conducted by the FBI in response to a request by the Department of Justice, it was estimated that the FBI presently contracts out approximately $58 million in personal services contracts to the private sector.

FBI versus DEA Drug Investigations

QUESTION: In the area of drug law enforcement and investigation, can you tell us whether there is a qualitative difference between your investigations and those of the Drug Enforcement Administration? Do your agents target larger drug organizations? Do your agents use different techniques? How much coordination is there between the FBI and DEA in drug investigations?

ANSWER: The FBI's National Drug Strategy (NDS) directs the use of available resources to conduct sustained investigations of major multi-jurisdictional drug trafficking organizations with the intention of dismantling trafficking networks, arresting their leadership, and seizing and forfeiting their ill-gotten gains. This long-term approach is based on the FBI's experience and expertise developed through investigations of traditional organized crime and the realization that the neutralization of organizations yields the greatest and most lasting results. This was part of former Attorney General William French Smith's stated reasons for delegating concurrent criminal drug law enforcement jurisdiction to the FBI in January 1982. Attorney General Smith stated the FBI was to focus on complex conspiracy investigations, recognizing the FBI's areas of expertise in the use of electronic surveillance, lengthy undercover operations, informants, physical surveillance, other complex investigative techniques, and, in particular, financial analysis.

To coordinate activities of the FBI and DEA in drug investigations, a number of initiatives have been jointly undertaken. The FBI and DEA are joint participants in a number of Organized Crime Drug Enforcement Task Force (OCDETF) cases as well as other joint cases on an ad hoc basis. In several offices, DEA and FBI Agents are collocated. The FBI and DEA routinely exchange information on all drug case initiations and at critical junctures of cases. The FBI also has an Intelligence Unit collocated at DEA Headquarters' Office of Intelligence. Currently, there has been measured success in the establishment of joint intelligence working groups in several field offices with the prospects for this initiative being extended to other offices. In summary, the FBI and DEA have established and are extending an interlocking relationship to insure coordination in drug investigations and the effective use of resources.

QUESTION: I have heard rumors that the Attorney General is considering a proposal to consolidate the FBI and DEA. What are your views on whether such a consolidation is feasible? Would such consolidation present technical problems, for example, differing computer and communication systems?

ANSWER: On April 27, 1987, then Attorney General Edwin Meese III announced a management plan that would enhance DEA/FBI joint operations, but which would not merge the FBI and DEA into a single organization. The mandate of the Director of the Office of National Drug Control Policy to report by January 15, 1990, recommendations concerning changes in the organization of Federal agencies engaged in drug law enforcement may cause a revisiting of the merger issue, but there are no plans for a merger.

The greatest advantage of merger is the establishment of one management system in the Federal Government for drug investigations under 21 U.S.C. Additionally, drug trafficking encompasses a multitude of ancillary criminal activities which the diversified expertise and mission of the FBI is ideally suited to pursue through all the multiple infrastructures of drug trafficking organizations. The disadvantages of a merger primarily concern administrative matters: Civil Service (DEA) v. Excepted Service (FBI); placement of personnel; logistic integration of facilities, resources and record and intelligence systems. Computer and communication systems do not pose any technical problems that would not be overcome by a merger.

New Inspector General - FBI Inclusion

QUESTION: The Inspector General Act Amendments of 1988 calls for the establishment of an Office of Inspector General in the Department of Justice. The mission of the Office is to conduct audits and investigations relating to programs and operations of the Justice Department. The Justice budget request reflects establishment of such an office. Although the audit functions of the DEA and the Marshals Service are brought within the jurisdiction of the new Inspector General's Office, the FBI is not brought within its purview at this time. Do you have any thoughts as to whether the FBI should be brought within this office? Explain.

ANSWER: The FBI believes the Attorney General should not exercise his option to transfer FBI audit and inspections functions to the Inspector General of the Department of Justice (IG/DOJ). However, if the Attorney General elected to make the transfer, the FBI is prepared to cooperate fully. The FBI maintains an Inspection Division that comprises the Office of Inspections, the Office of Professional Responsibility, and the Office of Program Evaluations and Audits, that carry out a full range of highly detailed audit, inspection, and evaluation functions. The Assistant Director of the Inspection Division exercises complete independence with regard to the mission and activities of the Inspection Division and has unrestricted access to the Director. Reports of the above three components of the Inspection Division are provided to the Director on a regular basis in addition to oral presentations and frequent meetings.

The Inspection Division has been evaluated and reviewed by the General Accounting Office (GAO) in 1979 and 1988. In the recent 1988 report, GAO stated:

> The FBI has improved its inspection and program evaluations since the 1979 report.
>
> The FBI has refocused its activities and now concentrates its efforts on investigative programs and administrative matters.
>
> The FBI has initiated program results audits on all major investigative programs.
>
> The FBI has raised requirements for staff selected for the Program Evaluations Unit; with most having advanced degrees.

The GAO report raised the issue of possible impairment to independence; however, no evidence was found that the internal audit and inspection units were impaired in carrying out their assigned functions. On the contrary, the Inspection Division exercises a high degree of independence in the discharge of its inspection responsibilities. Additionally, most recommendations made by GAO have been implemented, reflecting the FBI's willingness to be responsive to suggestions for improvement.

During the past several years, Congress has held numerous hearings regarding the establishment of an IG to oversee the FBI. These hearings, along with various reports and studies, were taken into account, and were considered during the recently passed Inspector General Act Amendments of 1988.

DEA/FBI Training Needs - New Facility

QUESTION: The DEA budget indicates that the space for in-service training at the FBI Academy at Quantico will be virtually unavailable. I understand that one idea being considered is the establishment of a new training facility. Do you agree that space at Quantico is unavailable? Would it be feasible to expand facilities at Quantico? Do you believe that DEA training could be done at the Federal Law Enforcement Training Center in Glynco, Georgia, where much of our Federal law enforcement training is done?

ANSWER: Based on a May 1988 joint FBI/DEA study, it was determined that at a minimum, 90 percent of FBI Academy lodging space must be allocated on an annual basis during the 1991 to 1995 time period to meet projected training obligations. Based on zero growth rate, DEA estimated that under these circumstances, DEA could meet no more than an average of 36 percent of agency training needs during the same time period. Based on this forecast, FBI and DEA officials are in agreement that a solution to this training void has been reflected in the President's 1990 budget request for DEA. It includes $4,025,000 for DEA to defray expenses to develop and conduct in-service training at additional training sites such as hotel and conference facilities near the FBI Academy and other Federal training centers such as the Federal Law Enforcement Training Center at Glynco, Georgia.

DEA is currently exploring with the U.S. Marine Corps the possibility of acquiring additional space at the Quantico base. In regard to the possibility of expanding the Quantico, Virginia, facility, the existing FBI Academy is at capacity. There is no existing space for additional staff or storage. Any need to house additional students could only be accomplished by cancelling classes that have already been scheduled or proposed. Expansion of the existing FBI Academy is not feasible without a significant enlargement of the utility distribution systems (electricity, water, and sewage). Both the water and sewer systems are currently at capacity. The primary electrical distribution system will be beyond capacity during the coming hot, humid summer. The FBI Academy's central plant, where water is chilled and heated for space cooling and heating, is at capacity too, thus further limiting the possibility for expansion of the FBI Academy. There is only a finite amount of acreage at the FBI Academy and the Marine Corps has repeatedly inferred that we should not ask for additional acreage contiguous with the existing Academy. In reality, expansion of the FBI tract is impeded to the north, east, south, and west by the Firearms Impact area, the Weapons Battalion Headquarters, poor soil, and recreational development, respectively.

Organized Crime Drug Enforcement

QUESTION: The Anti-Drug Abuse Act calls for a unified appropriation for the relevant expenses of all Federal agencies participating in the Organized Crime Drug Enforcement (OCDE) Task Forces. The funds are to be appropriated to OCDE, and participating agencies, such as FBI, are to be reimbursed for their involvement in the activities of the OCDE Task Forces. The Attorney General has indicated that he will reimburse agencies according to the amount they have transferred to OCDE. However, the AG does have the discretion to reallocate resources within OCDE. It is therefore possible that OCDE will reallocate resources from the FBI to another participating agency. Do you have any concerns that you will not get reimbursed to the full extent of your participation?

ANSWER: Section 1055 of the Anti-Drug Abuse Act of 1988 required the transfer of all OCDE Task Forces agencies' resources to a single OCDE appropriation, beginning in

1990. The transfer of FBI OCDE resources may affect the FBI's flexibility with respect to assigning agents to drug investigative programs, based on the priorities of the FBI's National Drug Strategy (NDS). The FBI's 1990 OCDE-funded complement transferred was 414 agent and 223 general support positions and $51,589,000.

The FBI expects to receive back all of the resources transferred to the OCDE appropriation; therefore, the FBI does not anticipate any impact on its NDS. Any reduction in OCDE resources returned to the FBI may result in the need for the FBI to proportionally decrease its investigative commitment for drug enforcement. Nonetheless, the FBI, an original signatory to the OCDE Task Forces charter, remains committed to this program.

QUESTIONS SUBMITTED BY SENATOR FRANK R. LAUTENBERG

Assets Seizures

QUESTION: I am interested in a report on the Federal Government's efforts to seize assets from drug traffickers and how much of that money goes back to States for enforcement.

Please provide me with a list of the fifteen States in which the largest amount of assets were seized in 1988, the dollar value of the assets seized in each State, an estimate of the dollar value of unsold seized property in each State, a breakdown of the number of Federal and State agents involved in each State in seizure operations (or, if not available, some other analysis of the degree of Federal and State involvement), as well as the dollar amount returned to each State for law enforcement from seized assets. If New Jersey is not among the 15 States, please also include New Jersey in this report. Please provide the same information for 1989. Please explain the relation of the amount of assets seized in the various States to the amount of drug activity in the States and/or the level of drug enforcement.

ANSWER: Attached is a list of the fifteen States, in which the largest amount of drug assets were seized in 1988 and 1989 by the FBI. Included is an estimate of seized property currently pending forfeiture, and therefore unsold. The sharing column represents the dollar amount requested by local law enforcement agencies through the equitable sharing program.

The FBI participates in Organized Crime Drug Enforcement Task Force (OCDETF) cases as well as other joint cases with State and local law enforcement officials. Approximately 80 percent of all FBI drug investigations are such joint investigations. It is not feasible to identify the number of State and local officers involved in these joint cases as assignments may be only on a case-by-case basis as needs exist. As a generalization, there would be on average of one officer per FBI Agent.

The number of FBI Agents assigned to the fifteen States with the largest Federal drug seizures, plus New Jersey, are as follows: Florida, 119; California, 162; New York, 114; Texas, 86; Nevada, 11; Illinois, 48; Virginia, 6; Pennsylvania, 60; New Mexico, 11; Hawaii, 3; Oklahoma, 13; Connecticut, 11; District of Colombia, 24; Colorado, 8; Georgia, 25; and New Jersey, 44. (The latter includes two Agents assigned to the FBI's Philadelphia Field Office who are assigned to drug investigations in the metropolitan area of Philadelphia located in New Jersey, primarily Camden. Seizures by these two FBI Agents would be attributed to the FBI's Philadelphia Field Office and would appear in Pennsylvania's totals. The value of such seizures, if any, is not separable but it is likely to have minimal impact herein.)

There are various explanations for the large variance on a State-by-State basis in value between seizures, number of seizures, pending value of seizures, sharing and number of FBI Agents. Different United States Attorneys (USAs) give different priorities to forfeiture matters. Pending value of seizures is very dependent on the availability of Assistant USAs. Additionally, the priority the USA gives to forfeitures has a direct correlation to the amount of initial seizures made by FBI Agents. This situation may be partly alleviated by the Anti-Drug Abuse Act of 1988 which appropriated funds for hiring 130 Assistant USAs for forfeiture as the well as the hiring of other attorneys. This will allow all USAs to allocate needed resources to forfeiture proceedings. Another factor is the individual State's position on seizures, including if seizures are allowed, if the State has committed resources to forfeitures and other related factors. California is a good example of how a State impacts on Federal seizures. The figures herein show California with a large number of seizures and a large value for sharing. This is due to California having had very limited seizure authority. (California has recently passed new seizure laws.) Therefore, many seizures that would normally have been made by State authorities became Federal seizures through the adoption process, and once the property was forfeited it was, in most cases, returned to the State authorities. (The figures herein do not distinguish between State and local authorities.) Therefore, California numbers for seizures and values may not be comparable to other States.

Nonetheless, even allowing for the above differences, New Jersey still has not fared well in the area of seizures. However, FBI management is aware that some FBI offices have greater success than others in seizures, in particular, the Miami Field Office. Therefore, Miami's seizure program was studied and an initiative to create FBI Forfeiture and Asset Seizure Teams (FASTs) was undertaken. FASTs are agents and support personnel with specialized training and expertise who are dedicated to maximizing the tracing, seizure and forfeiture of the ill-gotten gains of drug traffickers. The New York and Miami FBI Field Offices had FASTs for all of 1988 and the results are evident. Based on the success in Miami and New York, in December 1988, 12 additional offices, including the Newark Field Office, were instructed to institute FASTs. Personnel from these offices are receiving specialized training. It is anticipated that there will be significant improvements across the board in seizures, particularly in those offices that have not fulfilled their potential, like Newark. There is good cause for optimism. In 1988, the FBI had $113 million in Drugs Program seizures. In FY 1989, through March 9, 1989, the FBI already has $109.3 million in Drugs Program seizures as a result of only six cases. It should be noted that the total FBI budget for drug investigations in 1989 is $129.2 million.

STATE	SEIZURES FY 88 #	SEIZURES FY 88 VALUE	PENDING FY 88 #	PENDING FY 88 VALUE	SHARING FY 88* #	SHARING FY 88* VALUE
1. FLORIDA	(153)	$47,423,467	(109)	$48,497,420	(023)	$ 3,302,949
2. CALIFORNIA	(568)	19,961,090	(443)	20,465,029	(733)	12,640,105
3. NEW YORK	(248)	9,298,271	(158)	10,200,903	(060)	777,229
4. TEXAS	(331)	7,788,586	(248)	16,142,471	(109)	453,021
5. VIRGINIA	(045)	5,295,785	(022)	5,095,464	(037)	152,969
6. ILLINOIS	(145)	4,257,049	(073)	3,309,584	(059)	829,736
7. PENNSYLVANIA	(078)	2,808,570	(101)	2,971,653	(013)	174,069
8. OKLAHOMA	(045)	2,772,324	(054)	4,409,610	(037)	152,969
9. OHIO	(156)	2,400,716	(082)	927,306	(068)	549,510
10. COLORADO	(055)	2,323,868	(005)	259,575	(018)	257,655
11. GEORGIA	(142)	1,898,751	(136)	2,877,309	(018)	307,766
12. ARIZONA	(057)	1,839,919	(019)	964,780	(030)	1,203,438
13. ALABAMA	(110)	1,640,863	(057)	1,393,800	(074)	664,905
14. WISCONSIN	(065)	1,308,036	(046)	1,121,301	(020)	289,700
15. KENTUCKY	(050)	1,253,964	(040)	1,623,832	(022)	230,977

XX NEW JERSEY	(014)	141,186	(017)	365,858	(017)	46,250
XX OREGON	(087)	722,236	(035)	347,149	(016)	99,436

STATE	SEIZURES FY 89 #	VALUE	PENDING FY 89 #	VALUE	SHARING FY 89* #	VALUE
1. CALIFORNIA	(244)	$11,334,375	(671)	$31,527,851	(216)	$7,887,497
2. FLORIDA	(048)	8,432,918	(142)	55,726,807	(017)	505,051
3. NEW YORK	(074)	4,099,850	(223)	14,242,884	(158)	3,484,070
4. OKLAHOMA	(019)	1,070,887	(061)	4,486,561	(014)	681,256
5. TEXAS	(034)	837,719	(282)	16,980,190	(022)	66,409
6. NEBRASKA	(026)	685,311	(078)	1,261,637	(049)	652,340
7. TENNESSEE	(018)	676,770	(050)	1,653,996	(040)	406,926
8. OHIO	(061)	631,746	(127)	1,403,631	(038)	276,393
9. GEORGIA	(022)	564,286	(155)	3,424,011	(026)	513,771
10. ILLINOIS	(042)	493,970	(103)	3,746,254	(131)	2,993,786
11. OREGON	(034)	451,058	(069)	840,533	(093)	662,465
12. MISSOURI	(025)	327,001	(057)	846,842	(023)	249,781
13. ARIZONA	(013)	255,352	(030)	1,196,233	(017)	245,323
14. KENTUCKY	(006)	231,444	(046)	1,855,276	(006)	77,929
15. MARYLAND	(016)	216,819	(062)	2,718,094	(018)	433,515
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xx NEW JERSEY	(001)	12,350	(012)	216,535	(000)	- 0 -

* These figures represent sharing requests submitted to the FBI.
Actual figures for property shared with local agencies are available from the USMS.

QUESTION: Please describe the formula used to determine how seized assets are returned to the States for law enforcement.

ANSWER: The formula used to determine how seized assets are returned to the State and local law enforcement agencies is based on laws which permit the Attorney General or a designee, to share forfeited property with ". . . any State or local law enforcement agency which participated directly in any of the acts which led to the seizure or forfeiture of the property." (See Tariff Act of 1930, 19 U.S.C. Section 1616 as amended October 1984 and the Attorney General's guidelines on seized and forfeited property dated April 9, 1987.)

The amount shared is directly proportionate to the degree of participation by the local agency in the investigative matter. This amount can be increased if their participation was unique or unusual. An example of unique participation would be a situation where the local police initiated the case or their informant played a crucial role in the investigation.

In order to receive a share of the Federally forfeited property, a participating agency must file a request on the Application for "Transfer of Federally Forfeited Property" (DAG-71) within 30 days following the seizure of the property. This form is submitted to the Federal investigative bureau that seized the property for forfeiture. Following the forfeiture, the person making the request is notified of the sharing decision and any outstanding obligations which may be required before accepting the property.

Joint Drug Plan

QUESTION: The Washington Post reported on Saturday, March 11 that six cities have been chosen by the FBI for special "drug plan" task forces in cooperation with the DEA. Please provide an explanation of the criteria used to select the six cities for this project. What kind of resources will be allocated for this project? Will the New York Task force be involved in combating drug trafficking in New Jersey and Connecticut? Please compare the activity of sophisticated drug conspiracies in New Jersey with the activities of those in the cities selected for this project.

ANSWER: In January 1988, Director Sessions and Administrator Lawn established an FBI/DEA Joint Drug Plan (JDP) to jointly identify and address the most significant Colombian and Mexican drug trafficking organizations, using the combined talent and experience of both the FBI and DEA. The primary focus of the FBI/DEA JDP is to concentrate resources on those major drug trafficking organizations that require long-term, sustained investigations from case initiation through successful prosecution.

Initially, consideration was given to establishing the JDP in 11 cities, one of which would have been Newark, New Jersey. In order to better evaluate this initiative, the number of JDP cities was reduced to six: New York, Miami, Chicago, Los Angeles, Houston and San Diego. The selection of these six cities was based on FBI and DEA intelligence analysis that indicated these cities represent the largest importation and/or distribution centers in the United States.

Resources for this initiative were drawn from existing agency resources. FBI commitments vary from entire investigative units in some cities to six to eight agents in the other cities. As formulated, the JDP has utilized the most sophisticated investigative techniques. A shortcoming of the JDP, in some instances, has been the failure to hold to long-term commitments of personnel, primarily arising from differences in the perceived missions of the FBI and DEA. DEA has a much more expansive drug mission than the FBI, conceivably causing DEA to divert JDP resources to other drug traffickers, clandestine laboratory and licit drug diversion investigations.

The decision to limit the initiative to six cities had merit. Most, if not all, JDP substantive investigations could conceivably have been pursued unilaterally by either agency. It is early to tell of the degree to which cases benefited by joint efforts. Although there have been some noteworthy investigative results, our experience has demonstrated that the JDP's greatest promise is with concentrating joint efforts in the intelligence-gathering arena. To that end, several offices have established Joint Intelligence Working Groups (JIWGs) of FBI and DEA personnel and other offices have been identified where JIWGs will likely be established. It is anticipated that those groups will be patterned after the increasingly successful joint intelligence effort in Miami.

The JDP in New York, as well as other FBI/DEA initiatives, will affect drug operations in the tri-state area. The drug trafficking organizations targeted by the JDP, by definition, are organizations that are major importers and/or distributors of cocaine and heroin. Since illicit drugs in New Jersey and Connecticut primarily pass through New York City, the efforts of the JDP in New York will impact on drug trafficking in New Jersey and Connecticut through the dismantling of drug trafficking organizations.

There is no doubt that the activity of drug trafficking conspiracies in New Jersey is a serious crime problem. Excepting the six JDP cities, the FBI Newark Field Office has the second largest complement of agents assigned to drug investigations. The primary difference in the drug conspiracies is that New York City is both a primary importation and distribution point for cocaine and heroin whereas the primary source of illicit drugs in New Jersey is New York City. This is not to say that illicit drugs may not also be imported and distributed in New Jersey, but intelligence indicates that this activity is not nearly of the same scale as in New York City. Therefore, the drug conspiracies in New York, as well as other JDP cities, tend to be both more international and multijurisdictional in scope.

Newark, New Jersey Drug Investigations

QUESTION: The FBI Drug Report states that investigative resources committed to drug matters have the greatest impact when concentrated in areas of the nation identified as major centers for organizations involved in the importation and distribution of cocaine and heroin. According to the report, second-level drug distribution networks operate in seven U.S. cities, including Newark, New Jersey. What resources have been dedicated to Newark since its designation as a second-level drug distribution network? Are there any immediate plans for the FBI to commit additional resources to Newark to combat drug trafficking? If so, what kind of resources will be provided?

ANSWER: The Newark Field Office has a complement of 42 agents designated for drug investigations. The FBI's efforts in New Jersey are also supplemented by agents assigned to the FBI's Philadelphia Field Office that has specific responsibilities for drug investigations in the metropolitan area of Philadelphia that is located in New Jersey. Additionally, since the New York and Philadelphia Field Offices are contiguous to New Jersey, their overall efforts have a direct impact on drug trafficking in New Jersey. Excepting the six first-level drug importation/distribution cities, Newark has the second largest complement of agents assigned to drug investigations.

Since Newark is designated as a second-level drug distribution city, there are no immediate plans to increase the complement of drug agents in that city. However, the threat posed by drug traffickers across the country is under continuing review and, if it should be warranted, additional resources would be allocated to Newark.

It should be noted that the FBI's Newark Field Office has commendable achievements in drug investigations with its current resources. The Newark Field Office is currently conducting nearly 20 investigations of the highest level drug organizations under the Organized Crime Drug Enforcement Task Force (OCDETF) Program. Over 60 investigations are being conducted under the FBI's Drugs Program which do not require the multi-agency approach of OCDETF. Nearly one-third of Newark's drug cases have drawn on the expertise, intelligence data and talent of State and local law enforcement agencies. Our commitment to drug law enforcement and the Federal/State/local law enforcement partnership in Newark, and nationally, remains steadfast.

QUESTIONS SUBMITTED BY SENATOR TED STEVENS

Financial Institution Fraud Initiative

QUESTION: Director Sessions, you indicated in your statement that the President will request an FY 1989 Supplemental and will propose an addition to the FY 1990 budget request to hire 236 new Special Agents and 218 support staff. The new personnel would be charged with the task of investigating fraud in financial institutions which has contributed to the collapse of banks and savings and loans throughout the country. How many financial institutions are you investigating now?

ANSWER: The FBI has 357 failed financial institutions under investigation wherein criminal fraud has been alleged. It should be noted that this data is collected on an annual basis. This figure will be revised shortly to reflect our most recent statistical survey which is due in from the field offices by the end of March 1989.

QUESTION: How many actual cases of fraud have you uncovered?

ANSWER: As of the end of FY 1988, there were 7,385 bank fraud and embezzlement matters under investigation. Of this total, 3,446 or 47 percent of these matters involve losses in excess of $100,000.

QUESTION: If these funding increases are approved, how would this additional manpower be distributed?

ANSWER: Plans as to the actual deployment of the 236 agents and the schedule for putting these agents in place are not yet finalized. The primary focus will be the investigation of fraud in failed financial institutions so the majority of these resources will be assigned to the southwest, particularly Texas and California.

GSA Rent

QUESTION: GSA has doubled the rent the FBI must pay for the Hoover Building here in Washington from $19 million to $38 million. How did they justify this 100 percent increase over one year and how will this affect your budget?

ANSWER: In 1987, Government-wide the GSA Rent system replaced the Standard Level User Charges (SLUC) system. At that time, the General Services Administration (GSA) began charging rental rates that approximate those charged to commercial tenants for equivalent space and related services. Under GSA's rent system, the cost of rent for the J. Edgar Hoover (JEH) FBI Building increased from $19,938,179 in 1986 to $38,352,001 in 1988, or a 92 percent increase in the rent for the JEH Building. This increase represents an increase in GSA rental rates only, and is not the result of space expansion.

This substantial rate increase for rent charged by GSA has placed additional fiscal constraints upon the FBI. This increase coupled with the significant rent rate increases for FBI space throughout the country has caused the FBI to cease space acquisitions in support of its investigative responsibilities.

Program Decreases

QUESTION: Is the $4.3 million reduction you are seeking for the digital voice privacy equipment program and the $7 million cut you are asking for in computer work stations, a result, at least in part, of that rent increase?

ANSWER: No, these are separate actions. The reductions to the Digital Voice Privacy (DVP) radio equipment funding and the intelligent workstation bases are decisions to stretch out acquisition of this equipment consistent with current spending patterns and is independent of the rent increase.

QUESTION: Will the reductions in these programs slow the rate at which field offices such as Alaska are modernized?

ANSWER: The proposed reductions to the DVP and intelligent workstations will reduce the rate of procurement below originally planned levels but are in line with the 1989 level.

No one field office in particular will suffer from slowed modernization as a result of the proposed reductions to the DVP program. Field offices will have the DVP capabilities available for use for special and major case operations; however, the proposed reductions will stretch out the total implementation time of the system.

The proposed $7,000,000 decrease in the ADPT Program will also not impact one field office alone. The reduction will stretch out the acquisition of intelligent workstations which are related to the FOIMS and other FBI information systems Bureau-wide. The FBI will be able to acquire 5,705 computer workstations through 1990.

QUESTIONS SUBMITTED BY SENATOR MARK O. HATFIELD

Available Resources

QUESTION: Are you using all of the resources you have available?

(a) How many agents have been appropriated?
(b) How many agents are you using?

ANSWER: Yes. The FBI is utilizing all of the 9,592 agent positions appropriated for 1989. As of January 31, 1989, the FBI had an on-board complement of 9,589 agents.

National Drug Strategy

QUESTION: I am familiar with your National Drug Strategy. What do you need to implement that strategy effectively, particularly over the next two to three years?

ANSWER: The FBI's National Drug Strategy (NDS) sets forth the FBI's mission and objectives in drug law enforcement. The NDS is a three-to-five-year strategy which focuses the FBI's investigative resources on the highest levels of major drug trafficking organizations: Colombian/South American; Mexican; European/Italian; Asian; and other major, emerging drug trafficking organizations that are multi-jurisdictional in scope. The primary thrust of the NDS is to conduct long-term, sustained drug investigations using electronic and physical surveillance coverage and sophisticated undercover techniques to dismantle the major drug trafficking organizations and ultimately seize and forfeit their assets.

The FBI has received an additional 120 drug agents as a result of the Anti-Drug Abuse Act of 1988 and the annualization of those positions in 1990. Those levels represent sufficient resources for the FBI Drugs program.

Federal Expenditures

QUESTION: What has been the annual level of Federal expenditures for FBI activities in Oregon in each of the FY 1981 through FY 1988?

ANSWER: The annual level of Federal expenditures for FBI activities in Oregon, including the Portland Field Office and Resident Agencies within Oregon, in each of the FY 1981 through FY 1988 are set forth below:

Fiscal Year	Expenditures
1981	$3,764,906
1982	$4,026,446
1983	$4,308,625
1984	$4,727,148
1985	$6,459,816*
1986	$5,664,216
1987	$6,253,451
1988	$7,040,619

* Includes expenditures of $611,000 for a nonrecurring GSA building maintenance project.

Employment Levels

QUESTION: How many FBI agents have been assigned to Oregon during each of the fiscal years 1981 to 1988? What has been the average turnover rate for individuals filling these positions during this period?

ANSWER: The following chart delineates the number of FBI agents assigned in Oregon; the number of these agents separated from the organization due to retirement, resignation, removal, or death; and the turnover rate. The transfer of these personnel was excluded from the turnover rate calculation due to the routine and customary occurrence of transfers.

Fiscal Year	Average Number Agents Assigned	Number of Separated Employees	Turnover Rate
1981	59	0	0%
1982	55	0	0%
1983	55	1	2%
1984	61	3	5%
1985	64	3	5%
1986	56	2	4%
1987	60	5	8%
1988	62	2	3%

Agency Mission

QUESTION: What is the specific mission or responsibility of the FBI in Oregon; how has that mission changed between 1981 and 1988; in what ways is that mission likely to change in the future?

ANSWER: The specific mission or responsibility of the FBI in Oregon as well as in other States is to uphold the law -- to investigate violations of Federal criminal law; to protect the United States from hostile intelligence efforts; to provide assistance to other Federal, State, and local law enforcement agencies; and to perform these responsibilities in a manner that is faithful to the Constitution and the laws of the United States.

The FBI's mission is maintained by all FBI field offices and is virtually unchanged since 1981.

No change in the FBI's mission is expected.

Organized Crime and Drug Task Force

QUESTION: Does the FBI maintain a regular State and Local Task Force in Oregon, or perhaps a provisional Task Force office?

ANSWER: DEA receives resources to operate the State and Local Task Forces Program. There is no State and Local Task Force located in Oregon. The territory of the Portland Field Office of the FBI covers the entire State of Oregon. The office has been allocated seven agents for drug investigations, but is currently using in excess of sixteen agents. Half the agents are assigned to Organized Crime Drug Enforcement Task Force (OCDETF) cases which, by definition, are joint investigations with State and local law enforcement agencies, but a different program than the DEA-led State and Local Task Forces. The FBI Portland Field Office has had great success in these OCDETF cases. For example, the FBI was the lead agency in a case where over 100 law enforcement personnel participated in multiple arrests and search warrants, and over 33 kilograms of cocaine and six kilograms of black tar heroin were seized, the largest seizure ever in the State of Oregon. The Portland Field Office is currently the lead agency in a number of ongoing, complex OCDETF investigations with State and local law enforcement agencies. In addition, the FBI has entered into a cooperative agreement with the Oregon State Police (OSP) concerning intelligence arising from OSP drug-related traffic stops on Interstate 5, the main drug transportation corridor from Mexico/Southern California to Oregon, Washington and Canada.

Currently, the FBI holds a leadership role in the State of Oregon in task force investigations. This has been recognized by the U.S. Attorney who has dedicated a significant portion of his drug prosecution resources to FBI-led task force cases. The U.S. Attorney is personally prosecuting one such joint task force case where court-authorized electronic intercepts and a long-term undercover operation were utilized.

By the way of illustration, the results of just three of the FBI-led joint task force cases in the past year produced the following results: 51 search warrants; 44 arrests; seizure of over ten kilograms of cocaine and seven kilograms of heroin; pending asset forfeitures of over $1.5 million; expectation of indictments of fifteen to twenty individuals; and related local law enforcement prosecutive actions. In short, the FBI efforts in OCDETF cases in Oregon have been exemplary.

Forfeiture Seizures

QUESTION: How much in equitable sharing from forfeitures has Oregon received (displayed by calendar or fiscal year) since the inception of the program?

ANSWER: Since the inception of the asset seizure and forfeiture program, Oregon has submitted equitable sharing requests totaling $777,981 to the FBI. See below for a breakdown by fiscal year.

Asset Seizure and Forfeiture Activities

Equitable Sharing*

Year	Number	Value
1983	...	...
1984	...	...
1985	1	$4,500
1986	5	11,580
1987	...	...
1988	16	99,436
1989	93	662,465

* These figures represent sharing requests submitted to the FBI.

Methamphetamine

QUESTION: Has Oregon received its allocation or expenditure of funds from the Department for methamphetamine lab seizure assistance as was provided by Congress in FY 1989?

ANSWER: In the Conference Report (H. Report 100-979) accompanying the Department's 1989 appropriations act (P.L. 100-459), the conferees agreed that $510,000 of discretionary Anti-Drug Abuse Grants would be available for attacking clandestine drugs labs in the Portland, Oregon Metropolitan area. The application has been received by the Bureau of Justice Assistance and is proceeding through the regular grant review process. The grant should be awarded within the next 30 days.

In addition, Title II, Section 2405 of the Anti-Drug Abuse Act of 1988 called for the establishment of a joint Federal Task Force for the protection of public health with respect to illegal drug laboratories. DEA and the Environmental Protection Agency have established the task force, and have developed draft guidelines for the disposal of hazardous waste also required by the Act. Based on the current timetable of events, funding of demonstration projects will begin in FY 1990. Law enforcement officials in Oregon will be fully informed as to the guidelines and demonstration project process.

Regional Information Network

QUESTION: On what basis did the Administration decide NOT to seek money in fiscal year 1990 for the Regional Information Sharing Network?

ANSWER: Since 1980, Congress has provided $90 million for the Regional Information Sharing Systems (RISS) program.

Although the program is an effective tool for State and local law enforcement agencies, the scarce resources available for the Department are not enough to fund every worthwhile program. Given the state of the Federal budget, it is important that we devote available resources to criminal justice system responsibilities at the Federal level.

QUESTION: What Federal agencies, other than the Customs Service, participate in the Western Interstate Information Network?

ANSWER: Other Federal agencies that participate in the Western States Information Network are:

Air Force - Office of Special Intelligence
Army - Criminal Investigations Division
Bureau of Alcohol, Tobacco and Firearms
Department of Justice - United States Attorney Federal Financial Drug Task Force (Sacramento)
Bureau of Indian Affairs
Bureau of Land Management
Coast Guard
Drug Enforcement Administration
Federal Aviation Administration
Federal Bureau of Investigation
Agriculture - Forest Service
Immigration and Naturalization Service including the Border Patrol
Internal Revenue Service
United States Marshals Service
National Park Service
Navy - Naval Investigations
National Narcotics Border Interdiction System
United States Courts - Parole and Probation
Postal Service
Secret Service

QUESTION: Why are the FBI and DEA NOT active participants in the RISS program?

ANSWER: There are ten FBI offices and thirteen DEA offices that are active participants in the RISS program on a regional basis. In addition, FBI and DEA co-sponsor training and technical assistance activities with individual RISS projects, and actively participate in multi-jurisdictional task forces on many project-supported investigations.

DRUG ENFORCEMENT ADMINISTRATION

STATEMENT OF JOHN C. LAWN, ADMINISTRATOR

ACCOMPANIED BY:

DAVID L. WESTRATE, ASSISTANT ADMINISTRATOR, OPERATIONS DIVISION

DONALD P. QUINN, ASSISTANT ADMINISTRATOR, OPERATIONAL SUPPORT DIVISION

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HARRY H. FLICKINGER, ASSISTANT ATTORNEY GENERAL FOR ADMINISTRATION

MICHAEL J. ROPER, DEPUTY ASSISTANT ATTORNEY GENERAL, CONTROLLER

ADRIAN A. CURTIS, DIRECTOR, BUDGET STAFF

BUDGET REQUEST

Senator HOLLINGS. We will now turn to the budget request for the Drug Enforcement Administration. To present the testimony is Mr. Jack Lawn, the Administrator of DEA. The Drug Enforcement Administration is requesting $551,181,000 for fiscal year 1990, $16.2 million or 3 percent more than last year.

However, as with the FBI, their actual increase is somewhat higher when we take into consideration the reimbursable positions transferred to the Organized Crime Drug Enforcement Program. For the DEA, the amount reimbursed is $68.4 million, bringing the total increase for the Drug Enforcement Administration to $84.6 million or 15 percent more than the amount appropriated for fiscal year 1989.

Over the past few years, DEA's investigative efforts have resulted in dramatic increases in arrests, drug removals, asset seizures, and forfeitures. Yet, despite these achievements, the magnitude of the drug problem has created a mandate for increased efforts in reducing both the demand for and supply of illicit drugs.

Mr. Lawn, the Drug Enforcement Administration plays an integral role in our overall drug strategy. We would be glad to hear from you at this time.

PREPARED STATEMENT

Mr. LAWN. Thank you very much, Mr. Chairman. I have a formal statement and, if I may, I would like to read a brief statement for the record.

Senator HOLLINGS. Yes, sir; very well, and it will be included in its entirety in the record. Go ahead.

[The statement follows:]

STATEMENT OF JOHN C. LAWN

Mr. Chairman and Members of the subcommittee: I am pleased to appear before you today in support of the Drug Enforcement Administration's budget request for fiscal year 1990.

As you are aware, drug abuse, drug trafficking, and drug-related crime touch us all. We in Washington became front-row spectators to this tragic truth during 1988 when our own Nation's Capital achieved the dubious distinction of having the highest per capita murder rate in the country. Officials have linked this murder-per-day phenomena principally to drugs.

The magnitude of this national problem has strengthened our national commitment to reduce the supply of and demand for illicit drugs. This is evidenced most recently by the enactment of the Anti-Drug Abuse Act of 1988. I would like to thank the Congress for the many initiatives contained in this legislation that will further foster our efforts.

I must emphasize, however, that although enhanced authority will be very helpful in the drug control effort, an enhancement of resources is equally important if we are to accomplish our mission. We have opportunities that could result in significant advances in our anti-drug efforts; however, we need the additional resources to take advantage of these opportunities. We must show that we expect no more of other nations than we do of ourselves—that we in the United States follow the lead of our President in reducing the drug problem in our country.

Therefore, I hope you will keep the resource issue at the forefront of your legislative agenda for 1990 and, at the same time, will consider the strategy for achieving our mission as outlined in the President's budget currently before Congress.

The resources requested in this budget will allow DEA not only to maintain our impetus, but also to improve upon past performances. The request itself has undergone close scrutiny. It is derived from the agency-wide strategic planning process and reflects the policy and resources required to respond to the challenges confronting drug law enforcement today. Resources requested in 1990 focus on our foreign drug suppression programs, our strategic and operational intelligence capabilities, key domestic initiatives to bolster State and local task forces and our Asset Removal Teams, and support services such as automated data processing.

1990 BUDGET REQUEST

In total, DEA's 1990 budget requests 5,409 positions (of which 2,513 are special agents), 5,124 work-years, and $551.2 million in order to carry out its drug law enforcement responsibilities. This request includes program enhancements of 334 positions (164 special agents), 167 work-years, and $68.7 million.

However, in comparing the 1990 budget request to the 1989 enacted level, the net result is a reduction of 487 positions and 537 work-years, and an increase of only $16.7 million. These reductions (which total 821 positions, 815 work-years, and $70 million) result from the transfer of all Organized Crime Drug Enforcement resources (762 positions, 749 work-years, and $68.4 million) to the Department of Justice "Organized Crime Drug Enforcement" appropriation, as well as reductions for the transfer of 7 work-years and $550,000 to the Office of Inspector General, and a decrease of 59 positions, 59 work-years, and $540,000 for management and productivity improvement savings (the A–76 program). Because the majority of the reduction is associated with the Organized Crime Drug Enforcement Task Force program and will be returned to DEA on a reimbursable basis, no reduction in investigative activity will result.

FOREIGN DRUG SUPPRESSION

DEA's enhancement request centers around four major funding initiatives, derived from our 1990 strategic plan. The first is to expand and formalize DEA's foreign drug suppression programs. DEA requests 157 positions, 78 work-years, and $22.8 million to staff foreign special enforcement operations (such as Operation SNOWCAP) and to expand DEA's overseas presence in five countries through the Foreign Cooperative Investigations Program.

The majority of DEA's operational initiatives overseas are implemented on a temporary duty basis through special enforcement operations. In the past, agents have been diverted from regular domestic operations to staff foreign special enforcement operations, creating a strain on the capabilities of domestic offices. This request will alleviate the strain on the domestic enforcement program. In addition, by expanding DEA's overseas offices, DEA will also lay the foundation for future operations.

Considering that all of the cocaine and heroin, and most of the marijuana consumed in the United States originates from foreign countries, international drug control is an area of primary concern. Consequently, DEA's foreign suppression and enforcement efforts targeting the supply of cocaine and heroin at the source are crucial to the overall success of the Federal drug strategy.

INTELLIGENCE

The second initiative is to formalize a national narcotics intelligence system. DEA requests 97 positions, 49 work-years, and $8.4 million to provide a comprehensive enhancement to DEA's intelligence program.

Last year, DEA requested resources to expand the El Paso Intelligence Center into a tactical all source intelligence center as directed by the National Drug Policy Board. DEA applied $4.7 million of the $30 million provided by the Anti-Drug Abuse Act of 1988 toward expanding EPIC which will enable EPIC to provide more timely and actionable tactical intelligence to law enforcement agencies throughout the country. We dedicated our new EPIC facility at Fort Bliss, the Camarena Building, in February 1989.

The 1990 request seeks to improve our intelligence capabilities to enable us to respond to strategic intelligence requirements emanating from DEA's designation as the lead agency for drug intelligence. Such strategic intelligence requirements include comprehensive data on drug trafficking and production (both domestically and abroad) and on drug consumption. The request also will enable us to provide adequate financial and operational intelligence to support DEA's current investigative work force. With these improved intelligence capabilities, DEA will be able to assist Federal policy makers in determining the most effective allocation of scarce resources, and to help investigators in maximizing the full potential of criminal cases.

DOMESTIC ENFORCEMENT

The third initiative is to immobilize major traffickers and their trafficking organizations by enhancing DEA's domestic operations in major trafficking areas. This initiative contains 72 positions, 36 work-years, and $15.7 million to improve DEA's specialized programs aimed at destroying the most significant drug trafficking organizations. Resources requested for specialized programs include 27 positions and $4.2 million for DEA's State and Local Task Force program, 25 positions and $2.5 million for DEA's asset removal teams, and $600,000 for domestic clandestine laboratory initiatives.

Also included in this initiative is funding to enhance the investigative support infrastructure that impacts on the safety, effectiveness, and efficiency of all of DEA's operations. These enhancements include $975,000 for firearms equipment, $4 million for increased in-service, international, and State and local training, additional chemist support, and replacement laboratory equipment.

SUPPORT SERVICES

The fourth and final initiative is to expand DEA's support services in key areas of shortage. This initiative will provide eight positions, 4 work-years, and $21.9 million for improved information services, necessary laboratory expansion, statistics programs, and DEA's health program. As you know, the magnitude of the Nation's drug problem has led to significant resource increases for DEA over the past several years. However, not all support programs have received sufficient increases to allow them to keep pace with the requirements for services. This request seeks to address the resulting shortages in key areas of need.

ACCOMPLISHMENTS

Although we do not assume that investments in DEA alone will solve the problems of drug trafficking and abuse, DEA has a leadership role in the overall Federal drug strategy. Investigative efforts by DEA have resulted in dramatic increases in arrests, drug seizures, and asset seizures and forfeitures. DEA arrested a record 23,972 individuals in 1988. Of these, 17,026 were arrested in major cases—Class I and Class II. Between 1987 and 1988, cocaine removals increased 49 percent and heroin removals increased 108 percent. We are focusing more attention on the domestic production of illicit drugs, primarily methamphetamine production; this resulted in an increase in clandestine laboratory seizures, from 682 in 1987 to 810 in 1988. And finally, DEA's heightened focus on financial investigations resulted in asset seizures in 1988 valued in excess of $657 million, more than $150 million above DEA's 1988 appropriation. DEA was the originating investigative agency for $78.6

million in cash and property shared in 1988 with State and local governments. By any measure of productivity, DEA's accomplishments have been highly significant.

The resources in this request will result in increased statistical accomplishments. But DEA's activities cannot be measured by statistics alone.

In 1988, DEA continued its active participation in National Drug Policy Board activities. As the lead Federal agency responsible for drug investigations and drug intelligence, DEA led efforts to develop national strategies and implementation plans in these areas. By its participation in the numerous committees and subcommittees of the Policy Board, DEA coordinated with other agencies on issues ranging from drug law enforcement-related science and technology issues to demand reduction strategies. We expect this valuable cooperation to continue under the leadership of the Director of the newly created Office of National Drug Control Policy.

The year 1988 was also a landmark year in terms of international narcotics achievements. Perhaps the most significant activity, and eventually the most far-reaching, took place December 21 in Vienna, Austria, when 43 nations signed a United Nations international convention against illicit drug trafficking and drug abuse. Sixty-three other nations adopted the convention by consensus. In addition, the United States has negotiated an agreement with the Soviet Union for the exchange of information in fighting drug trafficking. The People's Republic of China provided excellent cooperation in crushing a major heroin-smuggling ring, with arrests occurring in both China and the United States. In South America, our continuing major action confronting the cocaine cartels, Operation SNOWCAP, is growing in effectiveness to a degree that is demonstrated by the vehemence of the reactions toward our presence. This past summer's highly successful International Drug Enforcement Conference Initiative demonstrated to the world the tremendous effectiveness of 30 nations working together in simultaneous and cross-border operations against drug trafficking. The seventh IDEC, hosted by the United States, will be held in Miami this April.

We are confident that we are making progress in the war on drugs. Our agents are a highly motivated and skilled cadre of dedicated professionals. They risk their lives on a daily basis in the fight against drug trafficking and abuse. The resources in this request will assist them in executing our drug law enforcement mission. The resources requested will enable DEA to continue the progress in the directions charted during 1988, and to create programs that represent new approaches to fighting the drug trafficking problem. Despite the magnitude of the problem, this request for limited additional resources can have an impact.

Mr. Chairman, I appreciate this opportunity to discuss DEA's budget request. I will be pleased to answer any questions you may have.

OPENING STATEMENT

Mr. LAWN. Thank you, sir. I am pleased to appear before this subcommittee today to support the Drug Enforcement Administration's proposed budget for fiscal year 1990. This request has undergone close scrutiny. It is derived from the agencywide strategic planning process and reflects the policy and resources required to respond to the challenges confronting drug law enforcement today.

As you have indicated, Mr. Chairman, the DEA's 1990 budget request is for 5,409 positions, of which 2,513 are special agent positions, 5,124 work-years, and $551.2 million in order to carry out our drug enforcement responsibilities. This request includes program enhancements of 334 positions, which includes 164 special agents, 167 work-years, and $68.7 million.

DEA's enhancement request centers around four major funding initiatives, derived from our 1990 strategic plan. The first is to expand and formalize DEA's foreign drug suppression programs. DEA requests 157 positions, 78 work-years, and $22.8 million to staff foreign special enforcement operations and to expand DEA's overseas presence in five countries through the Foreign Cooperative Investigations Program.

The majority of DEA's operational initiatives overseas are implemented on a temporary duty basis through special enforcement operations. In the past, agents have been diverted from regular domestic operations to staff foreign special enforcement operations, creating a strain on the capabilities of our domestic offices. This request would alleviate this strain on the Domestic Enforcement Program.

In addition, by expanding DEA's overseas offices, DEA will also lay the foundation for future special enforcement operations. Considering that all of the cocaine and heroin and most of the marijuana consumed in the United States originates from foreign countries, international drug control is an area of primary concern. Consequently, DEA's foreign suppression and enforcement efforts targeting the supply of cocaine and heroin at the source are crucial to the overall success of the Federal drug strategy.

Our second initiative is to formalize a national narcotics intelligence system. DEA requests 97 positions, 49 work-years, and $8.4 million to provide a comprehensive enhancement to DEA's intelligence program.

Last year, DEA requested resources to expand the El Paso Intelligence Center [EPIC] into a tactical all-source intelligence center, as directed by the National Drug Policy Board. DEA applied $4.7 million of the $30 million provided by the Anti-Drug Abuse Act of 1988 toward expanding EPIC, which will enable EPIC to provide more timely and actionable tactical intelligence to law enforcement agencies throughout the country. We dedicated this new facility at Fort Bliss several weeks ago, and incidentally, dedicated it to the memory of Special Agent Kiki Camarena.

In 1990, the request improves our capabilities to respond to strategic intelligence requirements emanating from DEA's designation as the lead agency for drug intelligence.

The third initiative is to immobilize major traffickers and their trafficking organizations by enhancing DEA's domestic operations in major trafficking areas. This initiative contains 72 positions, 36 work-years, and $15.7 million to improve DEA's specialized programs aimed at destroying the most significant drug trafficking organizations. Resources requested for special programs include 27 positions and $4.2 million for DEA's State and Local Task Force Program, 25 positions and $2.5 million for DEA's asset removal teams, and $600,000 for domestic clandestine laboratory initiatives.

The fourth and final initiative is to expand DEA's support services in key areas of shortage. This initiative will provide eight positions, 4 work-years, and $21.9 million for improved information services, necessary laboratory expansions, statistics programs, and DEA's health program.

As you know, the magnitude of the Nation's drug problem has led to significant resource increases for DEA over the past several years. However, not all support programs have received sufficient increases to allow them to keep pace with the requirements for services. This request addresses the resulting shortages in those key areas of need.

ACCOMPLISHMENTS

Although we do not assume that investments in DEA alone will solve the problem, DEA has maintained a leadership role in the overall Federal drug strategy. Investigative efforts by DEA have resulted in increases in arrests, drug seizures, asset seizures, and forfeitures. DEA arrested a total of 23,972 individuals in 1988. Of these, 17,026 were arrested in major cases, class I and class II cases.

Between 1987 and 1988, cocaine removals increased 49 percent; heroin removals increased by over 100 percent. We are focusing more attention on the domestic production of illicit drugs, primarily methamphetamine production. This resulted in an increase in clandestine laboratory seizures from 682 in 1987 to 810 in 1988.

Finally, DEA's heightened focus on financial investigations resulted in asset seizures, in 1988, valued in excess of $657 million, more than $150 million above DEA's 1988 appropriation. DEA was the originating investigative agency for $78.6 million in cash and property shared in 1988 with State and local governments.

Our agents are a highly motivated and skilled cadre of dedicated professionals. They risk their lives on a daily basis in the fight against drug trafficking and abuse. Just 2 weeks ago, we lost one such agent in an enforcement operation in New York City.

The resources in this request will assist us in executing our drug law enforcement mission and will enable DEA to continue the progress in the direction charted during 1988 and to create programs that represent new approaches to fighting the drug trafficking problem. Despite the magnitude of the problem, this request for limited additional resources can have an impact.

Thank you very much, Mr. Chairman.

FOREIGN DRUG SUPPRESSION PROGRAM

Senator **Hollings**. Mr. Lawn, going right to foreign drug suppression, your No. 1 priority here of 157 positions and $22.8 million. I visited up in the Golden Triangle last year. I have no criticism; the personnel couldn't have been more competent and more dedicated as far as I could see. In fact, I got all enthused. I was going right into the lion's den, the Golden Triangle being, of course, Thailand, upper Laos and Burma. And when we got through the briefing, I said, "Let's go into the area."

"Oh, Senator, you can't go in that area."

I said, "What's the matter?"

They said, "This is harvest season."

I said, "Well, isn't this the time to go see some of this?"

"Oh, you'll get killed. They have got their own armies and everything else like that."

Senator **Rudman**. Did you go? [Laughter.]

Senator **Hollings**. No; what I am saying is I tried, then, to begin to estimate what you had up there. What the State Department had up there and what other agencies of the Government had up there, and it came to some $20 million. Then I got to the bottom line question, which we all ask, and if I ask it in El Paso, Miami, Charleston, "We are not, Senator, interdicting over 10 percent; about 90 percent is coming through."

Up there, in the Golden Triangle, they put the heroin out in labeled form with a classification. They gave me a little label of a bag that would hold 250,000 dollars' worth of heroin. It was an empty bag framed as a sort of souvenir, but this was a feeling of frustration.

This drug situation is bigger than all of us. Do you think this is a good allocation of resources up in that Golden Triangle? I mean, they had a lot of names. When I had the briefing, good gosh, I thought I was going to get me a United Nations, a large group. I found out, with all the countries, there were five people or six people involved, that is all.

It is not an extensive effort. It is more an exchange of information. But that is the question. Could we match better our budgetary resources with the problem rather than chasing around up in the Golden Triangle?

Mr. **Lawn**. No, sir; I don't think so. Regarding your initial comments about our concern for your traveling into the area, you mentioned earlier this morning about your aquiring a Purple Heart several weeks ago.

Senator **Hollings**. That was here, without even traveling. [Laughter.]

Mr. **Lawn**. Yes, sir; well, had you traveled up there, you would have been guaranteed one.

Senator **Rudman**. Posthumously, probably.

Mr. **Lawn**. We feel that it is critically important for drug enforcement personnel to be in those countries because we can effect investigations at the source. If we have to wait until the illicit drugs arrive in the United States, then we are already operating at a loss.

For example, in Bangkok, Thailand, with our component of agents in that office, last year 1,200 kilos of heroin which was directed to New York City was seized. Had that seizure not been made in Bangkok, Thailand, the seizure would have been broken up into many, many parts in New York City, and we certainly would not have had the personnel capable of dealing with that heroin problem in New York City.

EFFECTIVE USE OF BUDETARY RESOURCES

Senator **Hollings**. The information is coming through and it is reliable, and it is productive. You really feel like you are getting a good return for that amount of money and effort up in that area, even though you can't get into the area, as I have described it. You can still find out enough information and not catch it there, but catch it down in Bangkok or in other places is what you are saying?

Mr. **Lawn**. Yes, sir; another example. It is true, we cannot get into two of the three countries you mentioned in the Golden Triangle. However, there was an investigation where intelligence was developed and as a result of this investigation in the Golden Triangle, over 200,000 pounds of marijuana was seized off the west coast of the United States. This seizure was made before that marijuana touched down on U.S. shores and, again, eliminated the need for us to initiate a domestic investigation in many, many offices to deal with that.

GOVERNMENTAL RESPONSIBILITY

Senator HOLLINGS. From your position of responsibility, is there a different way for our Government to get to the source of drugs at a higher level? Shouldn't the heads of government be in on this where they don't have the armies of their own and killing each other and everything else of that kind. In other words, a sanctioned operation in that part of Thailand and that part of Burma and that part of Laos?

Can we cut off aid? What are we doing up there at a higher level? You are on the beach and doing a good job interdicting, but what about foreign policy itself? It continues to allow this.

Mr. LAWN. Well, sir, with the certification process, Laos and Burma were just decertified.

Senator HOLLINGS. They were just decertified?

Mr. LAWN. Yes, sir.

Senator HOLLINGS. That is good news.

Mr. LAWN. They were not doing what should have been done. Thailand has been most supportive. We are in those countries at the behest of the host countries. We work with host country law enforcement, and our role is not a clandestine one. We are there supporting enforcement because of the tremendous benefit we derive here in our investigations in the United States.

CHEMICAL EXPORT RESTRICTIONS

Senator HOLLINGS. I remember the old Rockefeller empire being built because they had the delivery of the oil, the choke point. In that sense, there is a chemical they were selling here, acetic anhydride?

Mr. LAWN. Anhydride, yes, sir.

Senator HOLLINGS. Now, we are furnishing the chemical from the United States?

Mr. LAWN. Yes, sir.

Senator HOLLINGS. Yet we are up there proudly telling them and now you just said we sanctioned Burma and we sanctioned Laos. They come back at me and say, "You are sanctioning us. You are the one that is making it possible; you are the one that is sending the chemicals over."

What about that? Can we stop that manufacture and control the export at least?

Mr. LAWN. Yes, sir; this was the same question that was posed to me by the presidents of Peru, Colombia, and Bolivia, the three predominant source countries for cocaine. We have been most concerned.

Last year, in the Anti-Drug Abuse Act of 1988, you gave us the legislation we need. We now have the legislation where we can control U.S. chemicals from going to those source countries.

Senator HOLLINGS. What are you doing about it? You say you can. Tell the committee just exactly what has been done as a result of that authority.

Mr. LAWN. We have had meetings before the passage of the legislation with chemical companies in the United States to determine from them how best they can make their records available to us for law enforcement review. The language that would help those chemical companies and help law enforcement was included in the drug bill.

We have had two followup meetings with the chemical industry. We have teams together now that have begun reviewing those records, and we are well on our way, based upon the legislation you gave us.

Senator HOLLINGS. Thank you.

Senator Rudman.

Senator RUDMAN. I am glad to hear that is working, because I know that was very important to you.

Mr. LAWN. Yes, sir.

OPERATION SNOWCAP

Senator RUDMAN. I expect it will take some time to implement. I just have two or three questions, and one that Senator Domenici, who is at another hearing, asked me to pose to you.

First, on Operation Snowcap and that type of operation, the idea was that our agents would be there in an advisory role and that we would get a lot of local support. There was some evidence recently that they cannot be adequately protected by the host government, that the host governments don't have the military or the paramilitary forces to really do what has to be done, and our people are becoming increasingly active in an almost operational way.

I am wondering: *(a)*, if that is so; and *(b)*, if it is, can we really protect them? After all, that is of paramount importance.

Mr. LAWN. Yes, sir; Senator, it is of paramount importance, certainly of paramount importance to me, especially at a time when we are just recovering from the death of an agent.

But there was an operation in Peru where we felt the security of DEA personnel, and of United States citizens working on this suppression effort was not adequate. We temporarily shut down that operation until we are satisfied that security is sufficient.

Can we guarantee that we won't lose life? No, sir; we can't guarantee it in New York, and we can't guarantee it in Peru.

Senator RUDMAN. No, no; we wouldn't expect you to guarantee it. We would just not want to put them in a situation that we could anticipate that there would be death resulting because of inadequate security. That is my only point.

Mr. LAWN. Yes, sir; that was the reason Ambassador Watson of Peru and I decided to temporarily shut down the operation. I visited Peru last week. I was encouraged by the progress in establishing additional security.

I will not allow our personnel to operate unless I am personally satisfied that we are doing all we can to secure their personal safety.

ANTI-DRUG ABUSE ACT OF 1988

Senator RUDMAN. Thank you. Moving on to another question, on the bill that we all worked on last year, which was a joint effort. I was, as you know, very much involved in it, and I am wondering, as we get down the road a few months, are you generally satisfied with it? Did we miss anything? I's there something we need improving on?

Mr. **Lawn**. No, sir; the only component that was missing was the additional money.

Senator **Rudman**. Right.

Mr. **Lawn**. The bill gives us the tools, we think, that are critically important. If the additional funding were made available, that would help us immeasureably.

Senator **Rudman**. I happen to think it has to be made available. I don't think there is even a question of it. As you know, I offered an amendment before the Senate last year, which had, I thought, a rather ironic twist to it. My idea was to fund the use of illegal substances by taxing legally addictive substances.

So I would propose that we would increase the tax on wine, spirits, and beer, which hasn't been increased since the 1950's, tobacco and so forth, and pledge those funds, earmark them, which is a bad idea, generally, but I thought in this case, a very unique idea.

That didn't gain much support, as you may recall. Of course, last year ended in an even number, and years that end in even numbers are very difficult to get anything done politically. But this is a different year, and I do respect our new President. I supported him, and I have read his lips, but I will tell you that I am absolutely convinced that this problem can't wait, and I will come forward again with such a proposal if I feel by the end of the appropriations process this problem hasn't been properly addressed.

I think you need those funds. I think if we take the combination of that bill and what you have been able to do, what Judge Sessions has been able to do, and we now give you the money that you need, I think we can eradicate this problem over the next 10 to 15 years in this country—certainly ameliorate it.

Right now, it is growing. We are just not on top of it. So I have great respect for the President, but with all due respect to reading his lips, if we can't get the funding that we anticipate in that bill, $2.5 billion plus, then I am going to find a way, and maybe the chairman will have another way, but altogether, we are going to have to find the money. I don't think there is any question about it.

Mr. **Lawn**. Yes; yes, sir. I may say, that is a particular frustration. This year, in 1989, we will graduate only 84 special agents, certainly not enough.

Senator **Rudman**. Not enough.

Mr. **Lawn**. We seize $2 million a day from trafficking organizations, and when a field division calls and says, "We are running out of operating funds. Why can't we use some of the $2 million a day that we seize," it is a very frustrating thing to deal with our personnel who are risking their lives.

"CRANK" MANUFACTURING

Senator **Rudman**. Sure. I know you are aware that the chairman of the committee and the ranking member are 100 percent behind you on this issue. As far as I am concerned, this year, this is the single most important priority for this subcommittee.

With all due respect for everything else that we do, this problem needs immediate attention, and we are going to have to deal with it.

One other question, and one for Senator Domenici. Then, Mr. Chairman, I am going to have to excuse myself. I would like to stay for the whole meeting, but I have another meeting.

On the crank manufacture, which, I understand is methamphetamine, a USA, made-in-America drug with the USA label, what are we doing about it?

Mr. LAWN. Well, sir, we have been concerned about the clandestine lab problem in the United States. We, in budgets past, have requested assistance so that we could attack clandestine labs.

We have gone from the location and destruction of 200 labs several years ago to 682 in 1987 to 810 in 1988. We have personnel who are specially trained and task forces that are specifically designated to go after the clandestine lab problem. Within the immediate future, you will see some very, very tangible results.

JOINT TASK FORCE FOR TOXIC WASTE

Senator RUDMAN. Good. Would you get back to us on that as it starts to move? As you know, Senator Hatfield offered an amendment which we accepted, which creates a joint task force to clean up the toxic waste that accumulates because of the production of these illegal drugs.

Could you get back to us on that, also, within the next few months?

Mr. LAWN. Yes, sir; I certainly will. I would like to add, though, while I have the opportunity, that if we could miraculously put our military shoulder-to-shoulder around this country to keep cocaine and heroin from entering the country, there are enough illegal drugs manufactured in clandestine labs to satisfy every appetite. And that is our fault.

Senator RUDMAN. That is our responsibility. I think a lot of people don't realize that.

Senator HOLLINGS. That is a dramatic statement.

Senator RUDMAN. It is. You are right. There is a series of questions from Senator Domenici. Rather than state them all word-by-word, there are four of them. His concern is that out of 2,945 agents nationwide, 20 are in the State of New Mexico, compared to 62 in Arizona, 241 in Texas, 333 in California. He points out that the road nets in New Mexico are much larger than some of the adjoining States. He talks about the fact that the production of methamphetamins will be No. 1 in the Nation in New Mexico next year according to internal figures.

He is really very concerned about why that staffing is where it is. Will you answer that within 5 days in writing to the committee?

Mr. LAWN. Absolutely. Certainly will, Mr. Chairman.

Senator RUDMAN. I will submit that for the record.

Mr. Chairman, thank you very much.

SEIZED ASSETS

Senator HOLLINGS. Thank you very much, Senator.

Senator Kasten.

Senator KASTEN. Mr. Chairman, thank you. I want to just pick up on something that Senator Rudman just said. In your statement, you talk about asset seizures valued at $657 million and that that was $150 million above your 1988 appropriation level.

Mr. **Lawn**. Yes, sir.

Senator **Kasten**. I's there any way that we could work with you so that you could use those assets, so that these assets could be dedicated to your mission?

I don't know if the committee has explored this in the past, Mr. Chairman or not, but this is $657 million, and as I said, is $150 million more than we appropriated to them. What can we do?

Mr. **Lawn**. The money that is seized and forfeited goes into the Department of Justice asset forfeiture fund. There is a prohibition on agencies using that money for funding purposes that augment the budgets because that is the reason for our budget hearings.

Senator **Kasten**. Does the money just go to reduce the deficit? I mean, where does the money go?

Mr. **Lawn**. The money will——

Senator **Kasten**. What is it scored against or for?

Mr. **Lawn**. Well, if we work a joint case, for example, with local or State law enforcement, they may share part of what is seized. If we work with the New York City Police Department, make a seizure resulting in forfeiture of $10 million, and work jointly with them, they are given a portion, perhaps $5 million.

The majority of forfeited funds, however, are deposited into the Department's asset forfeiture fund. The only money we can take from the fund is money to support the asset program and certain clearly specified management expenses. The fund was not established to augment operations.

Senator **Kasten**. In that instance, what does the New York Police Department do with the money, with their $5 million? Do they turn it into a——

Mr. **Lawn**. Yes, sir; they use it for law enforcement purposes.

Senator **Kasten**. I think we ought to figure out a way that you can use it for law enforcement purposes.

Senator **Hollings**. What we do, if the Senator will yield, $90 million is used for prisons. I understand their feeling, that here I am getting money in, and yet I am shortchanged. But, at the same time, there is another consideration that this is the only reason I am making the arrest, because I am going to get the money.

I think the real choke point is you and me. We ought to see that they get at least as much as they seize. We are the ones that can correct that situation.

So the DEA can never be claimed to really, in making all of these arrests, that they are making money on their own and for themselves. That is just like these speed traps some small towns put up where they grab everybody coming through because they are going to finance the town. People are really not speeding, but that is a good reason to stop them anyway, and it takes too much trouble, you know, to try the case.

Mr. **Lawn**. That has never happened in your State, Senator. [Laughter.]

Senator **Hollings**. Let's you and I do that. I mean, we can work on the distribution of seized assets and still protect the integrity of the DEA.

MILITARY COOPERATION

Senator Kasten. Good. I have another question about accounts. My understanding is that with regard to the military cooperation, they are allocating about $300 million. But I understand, also, that there are some differences of opinion as to how the dollars that the military are allocating are actually being used on the ground, if you will.

My understanding is that, for example, the military is including in their calculation of funds dedicated to drugs, the training of AWACS pilots. Not just the use of the planes, but they go back and figure out how much it took to train the pilot that now is flying the plane that is doing the surveillance work and that they are, for lack of a better word, that they are kind of stretching in terms of what should be allocated to you, and we are not getting the bang for the buck that Congress might have anticipated.

Could you comment on that? In my specific example, I don't know if it is true or not, but I can tell you I understand what I am talking about.

Mr. Lawn. Yes, sir; I don't know the breakdown of how the $300 million the military has is being used. But I do know, when we were looking for material support, we were looking for monetary support for the special enforcement operation in South America, we were told there was no money available and that if we were interested in working with the police in South America on a cocaine suppression program, all of that funding had to come from either the international narcotics control appropriation of the State Department or DEA. An additional $2 million was given to us from the asset forfeiture fund.

So that is problematic for me where the $300 million is going. I don't know where it is going.

Senator Kasten. It is not all in this subcommittee, either. In fact, it might be difficult, but it is something that some of us who also serve on the Defense Subcommittee, as Senator Rudman and Senator Hollings both do, we ought to look at this, because it says up here in the big print, "You are getting 300 million dollars' worth of defense dollars," and, in fact, you are paying for all sorts of training and other kinds of things that would be going on whether it is used for drugs or not, you are not getting the total dollar commitment that it says in the top line.

Mr. Lawn. Yes, sir.

Senator Kasten. Can you help me? Am I right, what I am saying?

Mr. Lawn. Yes, sir; you are. We have little or no input into how those dollars are spent, and if we have the predominant responsibility for drug law enforcement efforts, certainly, we would like to have some input as to how those dollars would be spent to help the lead law enforcement agency in this program.

Senator Kasten. I don't want to get you in a big fuss with the Defense Department, but if you could respond to this question in some kind of writing or whatever and explain to us what you think you are getting for the money from the Defense Department and what you ought to be getting, then let us try to work.

I don't want to start a big fuss, but I am sure you are in fusses with them all the time, anyway. We think we are giving you this money, and it seems to me that maybe some of these issues, some of these dollars, in fact, aren't going to the purpose that we are dedicating them to.

Mr. **LAWN**. Yes, sir; thank you, and we will follow up with this.

Senator **KASTEN**. Help us, and we will work through this committee and also through the Defense Subcommittee, and we can look at this carefully.

Mr. **LAWN**. Indeed, this is something that Director Bennett will be looking at, how all of this drug money is being expended and how it can be better expended.

PERUVIAN DRUG ERADICATION

Senator **KASTEN**. I just have one other question, Mr. Chairman.

I am told that in the State Department program of drug or, I should say, coca plant eradication, that in Peru, we, for each acre that we cut down, there are 6 more acres that are growing. In other words, we are cutting down 1, and we see 6 more go up.

Is that ratio correct? What is going on here?

Mr. **LAWN**. I am not sure the ratio is correct, but I can say that in 1982, Dominique DeCarlo, who was then Chief of INM, testified before Congress that there were 40,000 hectares of coca being cultivated in Peru. I traveled to Peru last week, and the estimate is anywhere between 150,000 and 200,000 hectares currently growing.

Senator **KASTEN**. How many hectares did we say that we had eradicated or cut down?

Mr. **LAWN**. I believe last year the figure was 5,000 hectares.

Senator **KASTEN**. So they had 40,000; we cut down 5,000 and now there are——

Mr. **LAWN**. Two hundred thousand hectares.

Senator **KASTEN**. So my ratio is pretty close to right.

Mr. **LAWN**. That is the Peruvian estimate.

Senator **KASTEN**. You don't have to be a brain surgeon to figure out that that isn't necessarily working so well.

Mr. **LAWN**. No, sir; it is a very critical problem in Peru. In point of fact, in prior visits, I wanted to visit the growing area, called the Upper Huallaga Valley and we had difficulty getting a DEA plane into the valley because so much of the jungle was being burned off. The smoke was so heavy that an aircraft couldn't land.

Senator **KASTEN**. Being burned off to grow coca plants?

Mr. **LAWN**. Yes, sir; the area of growing in the Upper Huallaga Valley is an area about 40 miles wide and 200 miles long.

Senator **KASTEN**. Your statement or something I had before me said that roughly, is it 60 percent or 80 percent of the cocaine——

Mr. **LAWN**. Ninety percent.

Senator **KASTEN** [continuing]. Comes from this one valley.

Mr. **LAWN**. It is 50 percent from that valley; 90 percent from two countries, Bolivia and Peru.

Senator **KASTEN**. My number, I think, was 60 percent from the one valley.

Mr. **LAWN**. Yes, sir.

Senator **Kasten**. The valley that the State Department program is working on, the place for drug eradication?

Mr. **Lawn**. Yes, sir.

Senator **Kasten**. Should we just stop that?

Mr. **Lawn**. No, sir; we should continue what we are doing, in addition, and that is, we, DEA, are in the valley with La Guardia Civil. We are flying missions, locating clandestine laboratories, locating clandestine air strips. La Guardia Civil is destroying those air strips, destroying those clandestine labs. Last year in our efforts with La Guardia Civil, we destroyed 120 such laboratories. We have seized 15 metric tons of cocaine hydrochloride. That is cocaine that won't come to the United States.

Our effort in this endeavor involves 12 agents who are sent down there temporarily for 90 days to do this. If we can continue the pressure on the eradication side, and expand that pressure until the experiments that the Government of Peru has ongoing with chemical eradication are proven to be successful, we will have a most effective eradication program.

CROP AND LABORATORY ERADICATION PROGRAMS

Senator **Kasten**. Let me try my question again. You responded by saying that you have been successful in knocking out some labs and knocking out some air strips and knocking out some other things. That is fine.

My question is: Should we stop this business about knocking out an acre or two or a hectare or two? That doesn't work. Maybe we should concentrate; the State Department program, I know it is not yours, but if we are knocking out one and it increases by six or five in your ratio——

Mr. **Lawn**. Yes, sir.

Senator **Kasten** [continuing]. From 40,000 to 200,000, maybe we shouldn't do that; we should concentrate all of our resources on the labs, on the air strips and whatever, the kind of work that you just suggested you are doing.

Mr. **Lawn**. Yes, sir; I understand what you are suggesting.

Senator **Kasten**. Could you respond?

Mr. **Lawn**. I think that the eradication program does have an impact, because in the Upper Huallaga Valley, in the area of cultivation, there are many migrant workers, people who leave other parts of Peru because of poverty to go up into the gold fields and plant coca. If the coca that they plant on these fields is eradicated, however small the eradication might be, those farmers will then go elsewhere and seek other work.

Senator **Kasten**. They go to the other six. We knock out 1 acre, and they grow 6 over here.

Mr. **Lawn**. Perhaps so. Perhaps they go home and look for licit employment. We think it does help as long as there are other efforts, because eradication alone won't solve the problem.

Senator **Kasten**. That is my question. I mean, that is the purpose of this whole line of questioning. Eradication isn't working.

Mr. **Lawn**. Eradication by itself, no, sir; that is absolutely correct.

Senator **Kasten**. Therefore, the scarce resources we have ought to be going somewhere else to be knocking out the labs, to be knocking out the air strips; do you disagree with me?

Mr. **Lawn**. No, sir; I certainly agree that, without getting myself in too much hot water with the State Department, that further resources on the laboratory destruction, clandestine lab destruction and other enforcement efforts would have greater impact, indeed, has greater impact on the eradication mode.

Senator **Kasten**. In another subcommittee, the Foreign Operations Subcommittee, which I just left a moment ago, we have that responsibility. We fund that, I can't remember the woman's name, Ann——

Mr. **Lawn**. Ann Wrobleski.

Senator **Kasten**. Ann Wrobleski, and she is doing her best, but we have got to start looking at where the dollars are working, and obviously, if they are planting six for every one we knock out, we maybe ought to be doing something else.

Mr. Chairman, thank you.

RESOURCES DEDICATED TO DRUG ERADICATION

Senator **Hollings**. I think the question is more than appropriate and an excellent one with respect to the money. I am asking as a matter of record that we follow up with OMB and just break it all down for the committee, so we will know, not just with DEA. We can find that out, where every dollar goes.

Otherwise, do you recommend decertifying Peru? I mean, the more you work, the more they grow. It seems to me if you didn't put anybody down there, they would only have grown 40,000 hectares.

Mr. **Lawn**. The Government of Peru is working very, very effectively. They are losing officers regularly. Certainly, the cultivation is increasing, but the cultivation is increasing because we have an insatiable appetite for cocaine in this country.

The Government of Peru is beginning a chemical eradication program. That is a very, very bold move on the part of the Government of Peru. Other countries in South America are not so brave as to do that kind of thing. It will take an aerial application to have a substantial impact in the Upper Huallaga Valley, and they are taking this initiative. I think they should be applauded for it.

DEA AGENTS

Senator **Hollings**. I understand your answer. It is just, I am sort of frustrated, like the Senator from Wisconsin that somehow or other, with limited resources, there should be a better allocation, or let's not encourage them with that program you have got, because you can't even land a plane due to the clearing off and the smoke and everything else and the harvesting and growing.

Did you take those agents out of South Carolina? You heard the gentleman, the Director of the FBI said there wasn't a drug case in Charleston, Beaufort, the whole coastal area down there when he came on last fall. Have we taken my DEA agents and sent them to Peru?

Mr. **Lawn**. No, sir; we have trained a total of 180 personnel in this program of our complement of 2,913 special agents. They are sent down from all parts of the country for a 90-day period and then returned to their own offices to do domestic law enforcement.

In our budget, what we are asking for are 120 special agents who will backfill so that there is no vacancy when an agent is moved from New York or Dallas or somewhere else?

Senator **Hollings**. Yes.

Mr. **Lawn**. I can tell you, sir, whether there has been an agent moved from South Carolina.

Senator **Hollings**. We need some more down there, it is quite obvious if you can't find a drug case down in that coastal region.

Mr. **Lawn**. None. None have been taken from South Carolina, sir, and none will. [Laughter.]

Senator **Hollings**. Thank you. They will probably get lost down there in Peru, anyway, if they are like me. I thank you.

I thank Senator Kasten, too, for getting into our foreign drug suppression efforts, because that is very interesting. Let's trace that money on the one hand and determine a better allocation for our limited resources.

ADDITIONAL COMMITTEE QUESTIONS

We have additional questions that will be submitted, not only for myself, but for several of the subcommittee members, and we appreciate your responding to them.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

Special Enforcement Operations

QUESTION: A large portion of DEA's international drug control efforts are carried out through special enforcement operations (SEO's), which are short-term initiatives developed for a specific purpose to address a particular problem. SEO's are typically controlled and managed by a headquarters drug investigations section, funded from centralized resources, and composed of personnel on temporary assignment from other DEA enforcement and intelligence groups.

During 1988, the DEA utilized the equivalent of 150 special agent workyears conducting four major foreign SEO's. I understand 180 special agent positions have been utilized for 1989. The diversion of these resources from domestic enforcement activities to fund these SEO's creates a significant strain on the capabilities of the domestic program to accomplish its wide-ranging mission.

I see that the DEA is requesting 148 positions and $16.5 million to replace the resources previously diverted from domestic field operations for the SEO program. And, President Bush's budget has requested an additional $5 million for the foreign SEO program. Does this request represent an expansion of DEA's foreign activities?

ANSWER: This request formalizes and expands DEA's foreign enforcement activities. The majority of DEA's operational initiatives overseas are implemented on a temporary duty basis through the Special Enforcement Operations (SEO) program. In the past, positions have been diverted from regular domestic operations to staff foreign SEOs, thereby creating a strain on the capabilities of the domestic program.

QUESTION: How has the SEO program grown in recent years? Why has specific funding authority not been requested?

ANSWER: DEA has always conducted foreign SEOs, however, the SEO program has grown in the past few years with the addition of several major international operations. Foremost among these, is Operation SNOWCAP, which now involves approximately 180 special agents.

Specific funding has not been requested because of the nature of these operations. These are relatively short-term operations which respond to immediate enforcement needs that cannot wait for funding from the budget cycle. Agents involved are not transferred to foreign posts, but are detailed temporarily to foreign posts of duty from their domestic offices.

QUESTION: I am concerned with the lack of accountability of domestic enforcement positions as a result of assigning "Stateside" agents to foreign posts -- however temporary this may be. Has thought been given to formalizing the SEO program with permanent staffing?

ANSWER: The 1990 request effectively formalizes the SEO program. A restructuring option is under consideration to create a permanent staff available for temporary duty assignments abroad for SEOs and will be forwarded shortly to OMB and Congress for approval.

QUESTION: I would like a breakdown of domestic enforcement staffing levels, accounting separately for each office in the United States and personnel assigned to the SEO program abroad.

ANSWER: Domestic enforcement staffing levels have been provided previously to Appropriations Committee staff upon their request. Personnel for foreign SEOs are assigned on a temporary-duty basis, therefore, no personnel are assigned permanently to SEOs abroad. DEA has also provided a list of Operation SNOWCAP personnel to your staff.

QUESTION: Do you anticipate the SEO program continuing at existing levels, or do you expect an expansion of the program in the next few years?

ANSWER: Yes, DEA plans to expand the SEO program as required within the available resources.

Operation SNOWCAP

QUESTION: Since April 1987, DEA has been stepping up its foreign drug suppression activities in South America. Operation SNOWCAP, the umbrella name for these initiatives in South America, involves DEA, the State Department, the Coast Guard, and the Border Patrol of INS, among other participating agencies. SNOWCAP is focusing its activities on eliminating clandestine cocaine producing laboratories, and destroying clandestine air strips in Peru and Bolivia.

Articles in The Washington Post have described these operations in detail, and have concluded in an editorial that the United States should not focus on source country enforcement efforts.

Please respond to the criticism that DEA is wasting time and money in South America, when it should be focusing on law enforcement within the United States?

ANSWER: DEA is not wasting time and money on its source country drug enforcement/suppression efforts. Considering the fact that all of the cocaine and heroin, and most of the marijuana consumed in the United States originates from foreign countries, source country drug control efforts are crucial to the success of the Federal drug strategy. The Federal Government's highest enforcement priority is to stop the major drug suppliers by suppressing the production, transshipment and distribution of illicit drugs closest to the source as possible. Disrupting the first and least lucrative link in the grower-to-user chain will ultimately reduce the availability of illicit drugs in the United States.

QUESTION: How many DEA agents are involved in the South American operation? What kind of training do they receive?

ANSWER: About 180 agents are involved in Operation SNOWCAP, including Headquarters program coordinators and agents who are sent to South America for 90-day rotational assignments. Before each assignment to South America, the agents receive extensive training in tactical techniques, Spanish language, and safety survival methods. These courses were developed and are continually being revised to suit the needs of Operation SNOWCAP.

QUESTION: What is the nature of other agencies' involvement, including the local police organizations?

ANSWER: Other agencies' involvement in Operation SNOWCAP includes in-country operational assistance such as highway checkpoints (Border Patrol), riverine program (Coast Guard) and training (all agencies) for DEA agents and their foreign counterparts. The Department of State's Bureau for International Narcotics Matters is responsible for eradication, public diplomacy and information services, and funding local drug enforcement personnel overtime costs. In foreign countries, DEA agents work on a daily basis with foreign drug law enforcement counterparts in training and assisting in operational missions. DEA is responsible for all phases of project planning, implementation and assessment. DEA is also responsible for intelligence collection. The local police organizations are responsible for conducting the law enforcement missions.

QUESTION: What have been the accomplishments of this operation? What are the costs?

ANSWER: Statistical accomplishments from April 1987 through September 1988 are as follows:

- 146 hydrochloride laboratories destroyed;
- 3,500 cocaine paste and base labs destroyed;
- 35,000 kilograms of cocaine hydrochloride seized;
- 52,000 kilograms of coca paste seized;
- 28,000 kilograms of cocaine base seized;
- 575,000 gallons of essential chemicals seized, capable of producing 125 metric tons of cocaine; and
- seizures of 79 aircraft, 37 boats, 819 vehicles, and $5.3 million in currency.

Equally important are the intelligence contributions of the initiative and the level of disruption it is creating in the cocaine trafficking network.

In 1988, DEA spent a total of $6.4 million on direct costs of SNOWCAP operations: $2.7 million on operating expenses and the purchase of evidence and information; $3 million on aviation support, and $731,000 on training and firearms. When indirect costs are added to these direct expenses, the total cost of SNOWCAP is estimated at $10 million in 1988.

As of January 1989, DEA has spent $3.9 million on direct costs of SNOWCAP: $2.2 million on operating expenses and the purchase of evidence and information; $1.3 million on aviation support; and $413,000 on training. DEA is also providing $4 million to fund the retrofitting and operational costs of six helicopters to be sent to Peru and Bolivia in 1989, $2 million of which was provided by the Department of Justice's Assets Forfeiture Fund. The total cost of SNOWCAP operations in 1989 is expected to be $15 million, including the $2 million in retrofitting expenses.

Marijuana Eradication Program

QUESTION: I understand the DEA, U.S. Air Force, U.S. Forest Service, and the Civil Air Patrol will sign a memorandum of understanding (MOU) in early April to implement a joint, coordinated marijuana eradication program. The Civil Air Patrol, an all volunteer auxiliary of the U.S. Air Force, will fly Federal, State, or local law enforcement officers on missions to locate marijuana fields. The operational cost to be paid by DEA will be minimal, covering only the reimbursement for fuel, operation and maintenance of aircraft.

The DEA's domestic cannabis eradication program experts estimate that 1,000 flight hours per State is necessary to provide adequate aerial support in marijuana eradication efforts. I am told, however, the DEA plans to reprogram only $400,000 in FY 1989 for the Civil Air Patrol's marijuana eradication program -- enough to reimburse 26 States for only 400 hours of flight time.

Please provide me with a list of States that would receive funding for this joint DEA/Civil Air Patrol marijuana eradication program.

I know in my own State of South Carolina last year, 369 marijuana plots were located and 28,664 cultivated plants were destroyed. Is there not a source of funding that could be used to provide the additional 600 hours of flight time necessary to eliminate domestic marijuana cultivation?

ANSWER: DEA prefers that the list of States that would receive funding for the joint DEA/Civil Air Patrol (CAP) program be kept confidential. If such a list were public growers and traffickers would concentrate their illegal activities in the remaining 24 states, thereby defeating the purpose of using the CAP. DEA has provided such a list to your staff, but prefers to exclude it from the record.

DEA is devoting $3.8 million to the Domestic Cannabis Eradication/Suppression program in 1989. Given other funding priorities, DEA cannot divert other resources to fund the Civil Air Patrol expenses.

Relationship Between the FBI and DEA

QUESTION: Since 1982 the DEA has reported to the Attorney General through the Director of the FBI. What this means in practice has never been clear to those outside the two agencies. Please explain how this relationship works.

For example, does the FBI director make adjustments to DEA resource requests, revise DEA investigative priorities, or become involved in oversight of major cases?

ANSWER: While the FBI Director is kept informed generally of DEA policy changes, he has no involvement in DEA investigative activity. Resource requests and decisions concerning investigative priorities are communicated directly to the Attorney General.

QUESTION: Is consolidation of the FBI and DEA still an issue being considered? What are the pros and cons of such a merger?

ANSWER: The close relationship between the FBI and DEA has offered many advantages to both agencies. For example, the streamlining of operations and procedures, the sharing of certain facilities, and the conducting of joint investigations have resulted in both greater efficiency and also significant monetary savings. One illustration of this is the Six City Joint Drug Plan (JDP), which involves the collective experience, intelligence, and resources of both agencies. Another good illustration of this mutual benefit is in the area of training. DEA intends to continue taking advantage of the joint training facilities available with the FBI.

Because of the magnitude and nature of the drug problem, however, current plans are to maintain a single, separate, agency whose sole purpose is to focus on the anti-drug efforts of this country. Maintaining a separate agency avoids potentially divisive resource questions which could be a problem if such an agency had other responsibilities. DEA functions include: (1) serving as the principal Federal drug enforcement agency, (2) being the single point of contact for drug investigations in foreign countries, (3) the coordination of State and local efforts through the development of State and local Task Forces, (4) the collection and analysis of drug intelligence, and

(5) the establishment and maintenance of the diversion control program. The FBI has performed a variety of functions in its role as the nation's primary multi-purpose Federal law enforcement agency. Based on these important roles and responsibilities, there are no current plans to pursue a full merge.

QUESTION: FBI officials have stated that their investigations of groups are substantially different than those conducted by the DEA because they are generally longer-term and designed to bring down entire organizations at one time through such means as Rico cases.

Do you agree that the FBI's investigations are substantially different than those of DEA?

If so, should the DEA pursue at least some investigations with the same strategy as the FBI?

If not, is there a rationale for the FBI's involvement in Drug Law Enforcement other than to increase the resources devoted to Drug Law Enforcement?

ANSWER: DEA has focused and continues to focus its investigative efforts on ongoing major drug trafficking organizations and their leaders. Although drug law enforcement has become extremely complex in terms of interagency relationships, DEA has developed an extremely effective integrated division of labor which begins at the local law enforcement level in this country and spans the world into the law enforcement community of source countries. Thus, beginning with the cooperative efforts of DEA State and Local Task Forces and extending into the area of DEA's joint international drug enforcement initiatives, DEA is capable of providing all United States agencies, including the FBI, with a worldwide network of drug-related functions which include investigations, diplo-matic initiatives, the collection of intelligence and interdiction-related information, and other initiatives.

As a result of this full spectrum of intelligence and investigations, DEA is in a unique position for identifying and targeting ongoing drug trafficking conspiracies. Also as a result of this arrangement, DEA has enjoyed unparalleled success in the investigation of major drug trafficking organizations, not just domestically but internationally as well. A recent illustration of this success is Operation Polar Cap, which involved targeting of a billion dollar internationally money-laundering operation tied to the Medellin cocaine drug cartel.

By comparison, in the area of drug enforcement the FBI has focused on traditional and non-traditional domestic organized crime groups. While an important part of the integrated division of labor described above, this focus represents an area which, in essence, covers only a portion of the organizations that, at any given time, may be engaged in drug trafficking. Also, it has been DEA's experience that, although there are distinctly identifiable organizations, the composition and nature of these groups can change significantly in relatively short periods of time. Therefore, DEA's strategy of focusing on ongoing drug trafficking conspiracies allows both the flexibility of adapting rapidly to changes in the major organizations being targeted and also the ability of identifying and targeting new organizations that may emerge.

OCDE Transfer

QUESTION: Section 1055 of the Anti-Drug Abuse Act of 1988 mandates that the Attorney General submit one unified budget request for all expenses relating to all Federal agencies participating in the Organized Crime Drug Enforcement Task Force (OCDE) program. Beginning in 1990, the Attorney General will make reimbursements to the involved organization to provide flexibility among task forces and to allow the Attorney General to reallocate resources among participating agencies. It was also intended to ensure that the task forces function as a unit, without competition for resources. The DEA transferred $68.4 million to OCDE in the FY 1990 Budget Request.

How will this transfer affect DEA's participation in the OCDE program?

ANSWER: Because DEA anticipates that the Attorney General will reimburse agencies based on their contributions to the program, and because DEA has been involved in over 80 percent of all OCDE investigations since the program's inception in FY 1983, DEA should receive a reimbursement of $68.4 million in 1990. Therefore, the transfer is not expected to negatively affect DEA's participation in the program. DEA will remain a vital and committed participant in the OCDE program.

QUESTION: What if the Attorney General uses his authority to reduce the level of DEA's reimbursement to under $68 million?

ANSWER: This transfer includes not only direct program costs which account for only 25 percent of the funds transferred, but other costs as well, such as payroll, rent, utilities, office services, ADP services, and so on. Therefore, if DEA's reimbursement is significantly reduced, DEA may be forced to make operating adjustments via program reductions in order to fund any fixed costs. These would probably be in Domestic Enforcement. The Attorney General has indicated that he intends to reimburse components that maintain their OCDE participation.

QUESTION: I see where the DEA is requesting 27 positions and $4.2 million for the State and Local Task Force program in 1990 to fund seven additional task forces. In

general, describe the differences in the Organized Crime Drug Enforcement Task Force program and the State and Local Task Force program.

ANSWER: The Organized Crime Drug Enforcement Task Force Program (OCDETF) was developed as an interdisciplinary, multi-agency, prosecutorial tool to target the most significant drug trafficking organizations having the greatest impact on the availability of drugs in the United States. The OCDE task forces operate regionally. At the national level, a working group formulates overall policy and monitors the program. In the 13 regions, the U.S. Attorney in the region's "core city" manages task force operations through the multi-agency Task Force Coordination Group. This group approves and monitors all task force investigations to ensure that they are consistent with program goals and objectives, and that appropriate interagency cooperation occurs.

DEA's State and Local Task Force program, on the other hand, was developed to formalize long-standing relationships between DEA and the many State and local agencies with which DEA conducts joint investigations. The individual task forces, which currently number 44, are located throughout the United States. Each task force develops individual Memoranda of Understanding to address specific local drug issues and comply with local legal sanctions. State and Local Task Forces target the highest level traffickers in their own geographical area of responsibility. In many cases, investigations that begin as State and Local Task Force investigations are elevated to OCDE status as the investigation progresses.

Sentences and Fines

QUESTION: The Anti-Drug Abuse Act of 1986 increased sentences and fines applicable to major drug traffickers. The Act provides for enhanced penalties for repeat offenders and mandatory minimum sentences for certain violations.
Are Federal prosecutors seeking the enhanced penalties and stiffer sentences as intended by the 1986 Act? Are drug violators receiving longer prison sentences?

ANSWER: DEA's records indicate that violators are receiving longer prison sentences; however, DEA does not report the official statistics on prosecution and sentencing matters.

DEA Pay

QUESTION: The Anti-Drug Abuse Act of 1988 established a commission to review pay issues for Federal law enforcement officers. In October 1988, the FBI began a trial pay system for its New York Field Office employees which increases agents' pay and provides a mobility allowance for agents moving into the New York area. Should similar adjustments be made for DEA agents? DEA agents begin at

grades 7 or 9 while FBI agents begin as grade 10 employees. Do you believe the grade level of DEA agents should be made comparable to that of FBI agents?

ANSWER: Generally, DEA would favor the flexibility to offer the benefits accorded under the FBI's demonstration project; however, DEA also recognizes that providing these benefits on a limited basis may have an adverse impact on the morale of employees who are not eligible for the benefits. Accordingly, DEA would be more inclined to favor these benefits if they were applicable to other occupations and geographic locations where they are also experiencing recruitment and retention difficulties. This would facilitate the Department's efforts to hire and retain law enforcement officers.

We do believe the level of pay for DEA agents should be comparable to FBI; however, DEA cannot legally hire at Grade 10 for two reasons. FBI agents are excepted service, while DEA agents are hired under standards set by the Office of Personnel Management (OPM). OPM standards do not allow DEA to qualify entry level employees above Grade 9. Second, a Grade 10 does not exist for law enforcement officers in the OPM qualifications regulations.

Asset Removal Teams

QUESTION: Your budget request calls for an additional 25 positions (16 agents) and $2.5 million to complete placement of Asset Removal Teams in each DEA field Division. What was the value of DEA seizures and forfeitures last year? Who shares in the forfeiture fund and how is the money being spent? Is the forfeiture fund growing? Should this revenue producing program be expanded even further?

ANSWER: In 1988, DEA asset seizures were $657 million and asset forfeitures were $198 million. The following is a current summary of 1989 allocations from the Assets Forfeiture Fund:

FBI	$26,909,000
DEA	37,711,000
INS	7,950,000
USMS*	123,782,000
Criminal Division	969,000
United States Attorneys	5,565,000
DOJ-Justice Management Division	587,000
United States Postal Service	339,000

*Includes funding for equitable sharing payments.

The fund is used for expenses associated with the following:

- seizure and forfeiture of assets, e.g., paying liens, advertising seized property, contracting for assistance in the administrative forfeiture process, etc.;
- identification of assets to seize, e.g., purchase of evidence, payment of awards, etc.;
- sharing proceeds with participating State and local agencies (1986 Drug Bill requires sharing payments go to law enforcement purposes).

Beginning in 1988, excess funds available at year's end were made available to the Bureau of Prisons. In 1989, the U.S. Attorneys will also receive funding from receipts collected. Beginning in 1990, however, excess funds will be used by the Director of National Drug Policy to meet the Federal drug strategy leaving some resources available to the Attorney General for initial fiscal year operating costs.

Receipts deposited in the Assets Forfeiture Fund since 1985 were:

1985:	$27M
1986:	$94M
1987:	$178M
1988:	$207M

Finally, DEA encourages the continued use of this valuable program, but not because it produces revenue. Removing the profit from drug trafficking takes away both the means of operating and the incentive for doing so.

Drug Czar

QUESTION: The Anti-Drug Abuse Act of 1988 creates an office of National Drug Control Policy, and William Bennett, or course, has recently been named Director of National Drug Control Policy. Among other functions, Mr. Bennett will be responsible for developing a consolidated National Drug Control Program budget proposal to implement the National Drug Control Strategy. This budget must be transmitted to the President and to the Congress. In addition, the head of each agency involved in drug control activities must submit their budget requests to the Director of National Drug Control Policy at the same time they are submitted to the superiors. How will the creation of the Office of National Drug Control Policy affect DEA's operations? How will the budget process be affected by this additional layer of review?

ANSWER: Because this office is currently being established, its effect on the operations of DEA remains uncertain. However, DEA has previously developed national drug control strategies under the auspices of the National Drug Policy Board. These strategies will serve as the foundation for future drug supply and demand reduction initiatives. DEA, through the Department, will work with the Director of National Drug Policy on developing and implementing the best drug control strategies for this nation.

Obviously, the Director of National Drug Control Policy will have input into our budget formulation and review processes at DEA. The exact nature of this input are yet to be determined.

Foreign Offices

QUESTION: In 1990, DEA is requesting funds to open two new foreign offices (China and Thailand) and expand three others (Hong Kong, Vienna, and Cairo). Through its foreign cooperative investigations program, DEA currently has 65 offices in 45 countries overseas. DEA's overseas efforts are directed primarily at encouraging, advising, and assisting host governments in the development of programs to reduce the supply of drugs. Foreign offices also assist in facilitating foreign special enforcement operations, and lay the groundwork for future special enforcement operations. What drug problems are prompting the request for an office in China and a second office in Thailand? What about the office expansions in Hong Kong, Vienna, and Cairo?

ANSWER: Each of these foreign areas has groups that are principally involved in opium trafficking. They contain wide geographic areas that are currently covered by offices that are inadequately staffed and too distant to provide effective coverage. For example, the country attache in Cairo is solely responsible for 28 countries in North and East Africa. In addition, these areas are often production sites as well as easy transit points because of good air and sea connections along with open overland paths.

QUESTION: Why aren't you asking for funds to add or expand any offices in Latin America?

ANSWER: Presently, most of our strength in Latin America comes through SEOs. The 1990 Budget proposes funding to backfill positions currently on temporary duty assignment in Latin America.

QUESTION: What role does the State Department play in opening and expanding offices? Have they been consulted about this request?

ANSWER: The Department of State, specifically the Ambassador in each country, has express authority as to whether DEA can expand its presence. The State Department has informally agreed to DEA's proposals on each of the offices except mainland China, which is still in the early stages of discussion. No formal approval from the State Department is granted until resources have been appropriated and DEA is ready to deploy.

QUESTION: How do foreign offices lay the groundwork for future Special Enforcement Operations?

ANSWER: New SEOs are typically predicated on intelligence, informant networks, and support from the host government. This can be developed only through a long-term working relationship between a permanently assigned DEA country attache and the host.

Special Agent Strength & Equipment

QUESTION: Please supply a chart displaying the deployment of DEA agents by location as of September 30, 1988, the allocation of agents by location for fiscal year 1989, and the number of agents on-board by location as of December 31, 1988. What is the status of the Office in Hilo, Hawaii? Please supply a chart displaying the deployment of every DEA aircraft by location showing the type of aircraft, the function of the aircraft, how it was acquired, the year received, date of manufacture, and the cost.

ANSWER: Both charts have been provided to Appropriations Committee staff as requested. This information is classified and therefore we do not wish to include it for the record. The agent assigned to the Hilo post of duty reported on October 1987. In addition, one helicopter and one agent/pilot are also assigned.

Seized Cash

QUESTION: On two occasions within the past two years, the GAO reported that the Drug Enforcement Administration held substantial amounts of seized cash unnecessarily as evidence and that Justice and DEA Headquarters were not adequately monitoring cash being held as evidence to assure field office compliance with agency policies. According to DEA, inaccurate Headquarters' records contributed to this problem. The Anti-Drug Abuse Act of 1988 addressed the problem by requiring the Attorney General to include in his annual Asset Forfeiture Fund Report, the amount of seized cash being held as evidence. How much seized cash is currently held as evidence by DEA and how much of that amount has received the required Justice headquarters' approval? Please explain the reasons for any difference in these two amounts.

ANSWER: On January 23, 1989, DEA held $22 million in seized cash as evidence throughout its 19 field divisions. The amount of seized cash on hand fluctuates daily due to additional seizures, court actions, administrative processing, and the DOJ approval process. DEA's records, both automated an manual, do not indicate the amount of seized evidence that has received the required Justice headquarters' approval. According to field offices, however, nearly all the cash held has obtained approval or is in the process of being transferred to the Seized Asset Deposit Fund.

QUESTION: What actions have the Department of Justice and DEA taken to routinely monitor cash held as evidence to assure that evidentiary cash policies are being followed?

ANSWER: The Department of Justice and DEA have not jointly developed a system for routinely monitoring cash held as evidence. However, as part of the field office inspection process, the DEA Agents Manual requires that at least quarterly, and whenever the seized and recovered monies custodian changes, each field office must conduct an inventory of all seized and recovered money. Any discrepancies between requisite paperwork and the evidence held must be reported immediately to DEA Headquarters and other relevant parties.

In addition, DEA inspects each field division every 18 months to 2 years. Part of this inspection includes audits of the physical inventory of seized and recovered money, ensuring proper compliance with internal controls.

QUESTION: What action has been taken to improve DEA seized cash Headquarters' record, and what assurance does the Department of Justice have that the previous inaccuracies will not recur?

Answer: DEA is aware that its Computerized Asset Program (CAP) system, which generates seized cash records, overstates the amount of cash currently held in field divisions. Because of this, DEA is revising its CAP system, to be called the Asset Seizure Information System. This process, expected to take about a year, was initiated in December 1988.

[Clerk's Note.--With regard to an earlier question on domestic enforcement staff levels, the following information was subsequently provided by the Drug Enforcement Administration.]

[The information follows:]

DRUG ENFORCEMENT ADMINISTRATION
SPECIAL AGENTS CEILING/ON-BOARD
BY STATE
AS OF 9/30/88 & 12/31/88

	9/30/88		12/31/88	
STATE	CEILING	ON-BOARD	CEILING	ON-BOARD
Alabama				
Birmingham	4	2	4	2
Mobile	6	6	6	6
Sub-total	10	8	10	8
Alaska				
Anchorage	3	3	3	3
Sub-total	3	3	3	3
Arizona				
Phoenix	34	32	34	37
Nogales	6	5	6	6
Tucson	19	20	19	20
Yuma	4	5	4	5
Sub-total	63	62	63	68
Arkansas	8	8	8	7
Sub-total	8	8	8	7
California				
Calexico	10	10	10	10
Carlsbad	3	3	3	3
Fresno	10	9	10	10
Riverside	8	8	8	8
Los Angeles	124	122	125	127
Sacramento	19	17	19	19
San Diego	74	75	74	76
San Francisco	53	52	53	50
San Jose	9	10	9	10
San Ysidro	12	10	12	11
Santa Ana	8	8	8	8
Santa Barbara	6	6	6	6
Tecate	3	3	3	3
Sub-total	339	333	340	341
Colorado				
Denver	33	37	33	37
Gleenwood Springs	2	1	2	1
Sub-total	35	38	35	38
Connecticut				
Bridgeport	4	5	4	5
Hartford	14	13	14	14
Sub-total	18	18	18	19
Delaware	3	3	3	2
Sub-total	3	3	3	2
District of Columbia				
Washington	48	46	48	50
Sub-total	48	46	48	50

	9/30/88		12/31/88	
STATE	CEILING	ON-BOARD	CEILING	ON-BOARD
Florida				
Gainesville	6	6	6	6
Ft. Lauderdale	35	38	35	38
Ft. Myers	10	9	10	9
Jacksonville	10	9	10	10
Marathon	5	6	5	6
Miami	191	198	192	201
Orlando	8	8	7	8
Panama City	3	3	3	3
Tallahassee	4	4	4	4
Tampa	13	16	13	16
West Palm Beach	15	14	15	15
Sub-total	300	311	300	316
Georgia				
Atlanta	44	42	44	43
Columbus	3	3	3	3
Savannah	5	4	5	5
Sub-total	52	49	52	51
Hawaii				
Honolulu	15	13	15	14
Sub-total	15	13	15	14
Idaho				
Boise	4	4	4	4
Sub-total	4	4	4	4
Illinois				
Chicago	89	89	89	89
Springfield	3	3	3	3
Sub-total	92	92	92	92
Indiana				
Hammond	6	6	6	6
Indianapolis	7	8	7	8
Sub-total	13	14	13	14
Iowa				
De Moines	5	5	5	5
Sub-total	5	5	5	5
Kansas				
Kansas City	10	10	10	10
Wichita	4	4	4	4
Sub-total	14	14	14	14
Kentucky				
Louisville	6	7	6	6
Sub-total	6	7	6	6
Louisiana				
Baton Rouge	8	7	8	7
New Orleans	44	46	44	50
Shreveport	4	3	4	4
Sub-total	56	56	56	61

STATE	9/30/88		12/31/88	
	CEILING	ON-BOARD	CEILING	ON-BOARD
Maine				
Portland	4	4	4	4
Sub-total	4	4	4	4
Massachusetts				
Boston	48	53	48	50
Springfield	5	5	5	5
Sub-total	53	58	53	55
Maryland				
Baltimore	37	40	37	36
Sub-total	37	40	37	36
Michigan				
Detroit	71	72	71	76
Grand Rapids	6	6	6	6
Saginaw	2	2	2	2
Sub-total	79	80	79	84
Minnesota				
Minneapolis	12	13	12	12
Sub-total	12	13	12	12
Mississippi				
Jackson	8	9	8	7
Sub-total	8	9	8	7
Missouri				
Cape Girardea	3	3	3	3
St. Louis	29	35	29	34
Sub-total	32	38	32	37
Montana				
Great Falls	3	3	3	3
Sub-total	3	3	3	3
Nebraska				
Ohaha	5	5	5	5
Sub-toal	5	5	5	5
Nevada				
Las Vegas	9	9	9	10
Reno	9	9	9	10
Sub-total	18	18	18	20
New Jersey				
Atlantic City	6	6	6	6
Camden	4	5	4	5
Newark	47	45	47	50
Sub-total	57	56	57	61
New Hampshire				
Concord	3	2	3	3
Sub-total	3	2	3	3

	9/30/88		12/31/88	
STATE	CEILING	ON-BOARD	CEILING	ON-BOARD
New Mexico				
Albuquerque	18	17	18	17
Las Cruces	3	3	3	3
Sub-total	21	20	21	20
New York				
Albany	8	11	8	11
Buffalo	8	7	8	6
Long Island	12	11	12	12
New York	268	253	268	265
Rochester	5	5	5	5
Sub-total	301	287	301	299
North Carolina				
Charlotte	2	3	2	3
Greenboro	6	6	6	6
Wilmington	6	6	6	6
Sub-total	14	15	14	15
North Dakota				
Fargo	2	2	2	2
Sub-total	2	2	2	2
Ohio				
Cincinnati	6	4	6	6
Cleveland	11	10	11	10
Columbus	2	2	2	2
Sub-total	19	16	19	18
Oklahoma				
Oklahoma City	7	5	7	7
Tulsa	4	3	4	3
Sub-total	11	8	11	10
Oregon				
Eugene	9	8	9	8
Portland	9	9	9	9
Sub-total	18	17	18	17
Pennsylvania				
Allentown	2	2	2	2
Harrisburg	4	4	4	4
Philadelphia	48	47	48	49
Pittsburgh	9	9	9	9
Sub-total	63	62	63	64
Rhode Island				
Providence	7	7	7	7
Sub-total	7	7	7	7
Puerto Rico				
San Juan	21	19	20	23
Sub-total	21	19	20	23
South Carolina				
Charleston	5	6	5	6
Columbia	6	6	6	6
Sub-total	11	12	11	12

STATE	9/30/88		12/31/88	
	CEILING	ON-BOARD	CEILING	ON-BOARD
South Dakota				
Sioux Falls	4	4	4	4
Sub-total	4	4	4	4
Tennessee				
Memphis	6	6	6	6
Nashville	4	4	4	4
Knoxville	4	4	4	4
Sub-total	14	14	14	14
Texas				
Alpine	2	2	2	1
Austin	11	9	11	9
Brownsville	9	8	9	8
Corpus Christi	4	5	4	5
Dallas	36	42	36	41
Eagle Pass	4	3	4	3
El Paso	18	15	18	17
Ft. Worth	7	7	7	7
Galveston	6	7	6	7
Houston	75	75	75	79
Laredo	9	7	9	11
Lubbock	7	8	7	8
McAllen	28	27	28	27
San Antonio	25	26	25	26
Sub-total	241	241	241	249
Utah				
Salt Lake City	6	5	6	5
Sub-total	6	5	6	5
Vermont				
Burlington	2	3	2	4
Sub-total	2	3	2	4
Virginia				
Norfolk	7	8	7	8
Richmond	8	6	8	7
Sub-total	15	14	15	15
Washington				
Blaine	3	3	3	3
Seattle	34	39	34	38
Spokane	6	6	6	7
Yakima	2	2	2	2
Sub-total	45	50	45	50
West Virginia				
Charleston	5	5	5	5
Sub-total	5	5	5	5

STATE	9/30/88		12/31/88	
	CEILING	ON-BOARD	CEILING	ON-BOARD
Wisconsin				
Milwaukee	7	9	7	9
Sub-total	7	9	7	9
Wyoming				
Cheyenne	3	2	3	3
Sub-total	3	2	3	3
Grand Total	2,225	2,222	2,225	2,285

QUESTIONS SUBMITTED BY SENATOR WARREN RUDMAN

State and Local Task Forces

QUESTION: Your budget request calls for an increase of 27 positions (including 20 agents) and $4.2 million in the State and Local Task Force program to fund seven additional task forces. In what cities are the seven additional task forces to be organized? How effective are the DEA Task Forces in coordinating Federal, State and local efforts to combat drug abuse and drug-related street crime? What is the Federal role? Should the Federal Government have a greater role in attacking drug related street crime and violence?

ANSWER: The funds for seven additional task forces requested in the 1990 budget refer to the conversion of existing provisional task forces to program funded status. Although the exact location of the seven new task forces cannot be determined at this time, they will be chosen from the existing provisional task forces. The number requested is based on the average conversion rate for provisional task forces and the length of time that the existing ones have been in operation. The existing provisional task forces are:

Springfield, MA
San Diego, CA
Mobile, AL
Albuquerque, NM
Fresno, CA
Norfolk, VA
Saginaw, MI
Tyler, TX
San Francisco, CA
N. Lake Tahoe, NV
Columbus, OH
Westchester Cty, NY

The State and Local Task Force program has been very successful at increasing the cooperation between Federal, State, and local law enforcement agencies in the fight against drug trafficking. This cooperation allows local law enforcement to attack higher level traffickers than would otherwise be possible without this degree of cooperation. The program also makes significant contributions through the development of intelligence, particularly in reference to violators that were previously unidentified. Perhaps the most meaningful measure of success for the State and local law enforcement agencies is the ability to generate substantial revenues through equitable sharing of forfeited cash and property for their participation in Federal investigations. The task forces seized more than three times the amount that the entire program cost the Federal Government in 1988. DEA was the originating agency for $78.6 million in cash and property shared with State and local governments in 1988.

The Federal Government's highest enforcement priority is to stop the major drug suppliers by suppressing the production, transshipment, and distribution of illicit drugs at the earliest possible point. If we are able to concentrate our efforts at this level, it will ultimately assist the street-level enforcement effort. However, we have long maintained that it is the responsibility of the Federal Government to facilitate intergovernmental cooperation, which DEA accomplishes principally through the State and Local Task Force program. This program allows us to increase training to State and local officers, exchange intelligence, equipment, and investigative techniques, and develop cooperative cases.

The escalating drug-related violence is a direct result of the problems of drug trafficking and abuse in general. Only by addressing the root of the problem can we hope for any reduction in drug-related violence. DEA does have some specific initiatives that are aimed at drug violence. These include the Los Angeles Gang Task Force and Special Enforcement Operations dealing with the Bloods and Crips gangs, as well as Jamaican posses and crack dealers. These initiatives focus drug enforcement investigative initiatives target those organizations that have proven to have the greatest propensity for violence.

Rossides Recommendation to Break up DEA

QUESTION: Recently I received a letter from Eugene Rossides, who was Assistant Secretary of the Treasury for Enforcement under President Nixon. He has a number of interesting ideas to improve drug law enforcement, not all of which I necessarily agree with.

Among his recommendations is the breakup and transfer DEA responsibilities. He states that DEA's priority policy of eradication, stopping drugs at the source, cannot work because the total square miles of the earth's surface needed to supply the heroin and cocaine population of the U.S. is very small. He further states that the FBI should be made directly responsible for domestic drug enforcement.

Can you comment on his assertions regarding the ability of DEA to stop drugs at the source?

ANSWER: The Administration views drug eradication, suppression, and enforcement at the source of supply as a major component of our national drug control strategy. Disrupting the first and least lucrative link in the grower-to-user chain will ultimately reduce the availability of illicit drugs in the United States. I strongly disagree, therefore, with Mr. Rosside's assertions.

QUESTION: I have heard others suggest that the FBI should be merged with DEA, can you comment on this proposal?

ANSWER: In 1987, then Attorney General Meese decided that there would be no merger of the FBI and DEA. There are no current plans to implement such a merger. DEA and the FBI enjoy a close relationship that offers many advantages to both agencies. Yet, because of the magnitude and nature of the drug problem, the United States currently maintains a single, separate agency whose sole purpose is to focus on the drug enforcement efforts in this country.

DEA Training Needs - New Facility

QUESTION: Your budget justifications indicate that the space for in-service training at the FBI Academy at Quantico will be virtually unavailable. I understand that one idea being considered is the establishment of a new training facility.

Currently, much of our Federal law enforcement training not done at the FBI Quantico center is done at the Federal Law Enforcement Training Center in Glynco, Georgia.

How are you currently coping with the lack of available space for training. How do you envision meeting your training needs in the coming year?

ANSWER: DEA's 1990 budget request before Congress includes $4 million to expand our in-service, international, and State and local training capabilities. The shortage of training space has caused DEA to greatly curtail its in-service, State and local and foreign training program. The overflow training that was conducted, was accomplished through rental of meeting rooms and bed spaces in local hotels. The $4 million will allow DEA to rent facilities, prepare course materials, etc., for the expansion of the training program.

QUESTION: Can you tell us why it would not be feasible either for DEA to use the Center in Glynco, or to expand Quantico facilities?

ANSWER: DEA has determined that returning to Glynco for its in-service training is an unacceptable alternative. With over 60 Federal agencies currently using FLETC facilities, DEA does not believe that drug law enforcement training would receive the priority attention that it deserves given the scope of our current drug problem. DEA is continuing to investigate the possibility of expanding

Quantico facilities to service all Department of Justice drug law enforcement in-service training needs, and should have an answer on that option in the near future.

SNOWCAP Funding Under Domestic Account

QUESTION: **In your budget, DEA's foreign drug suppression /enforcement program in source countries -- I presume this includes activities such as Operation SNOWCAP -- is funded under the Domestic Enforcement account, rather than its own account or the Foreign Cooperative Investigations account.**

Can you explain why these activities are categorized under a domestic enforcement account rather than a foreign account?

Could this give a misleading impression of our domestic DEA activities?

ANSWER: Operation SNOWCAP is a special enforcement operation (SEO). DEA has always funded a majority of the personnel costs and most of the program requirements of SEOs from the domestic enforcement base for several reasons: SEOs are of limited duration and therefore often involve temporary personnel assignments from domestic field divisions; SEOs quite often are derived from and complement domestic investigations; and SEOs are managed out of DEA Headquarters and usually involve the participation of a number of field divisions. In the 1990 budget before Congress, the SEO request is also part of Domestic Enforcement largely because the requested agents will relieve the strain that these SEOs are causing domestic field offices.

DEA recognizes that this manner of accounting for SEOs could give a misleading impression of both our domestic and foreign programs. Therefore, a redefinition of our budget structure is under consideration so that it more accurately captures data pertaining to the SEO program.

Organized Crime Drug Enforcement

QUESTION: **The Anti-Drug Abuse Act calls for a unified appropriation for the relevant expenses of all Federal agencies participating in the Organized Crime Drug Enforcement (OCDE) Task Force. The funds are to be appropriated to OCDE, and participating agencies, such as DEA, are to be reimbursed for their involvement in the activities of the OCDE Task Forces.**

Under this procedure, it is possible that OCDE will reallocate resources from one participating agency, such as DEA, to another. Do you have any concerns that you will not get reimbursed to the full extent of your participation?

ANSWER: Because DEA has been assured by the Attorney General that in 1990 agencies will be reimbursed based on their contributions to the program, and since DEA has been involved in over 80 percent of all OCDE investigations since the program's inception in FY 1983, DEA is anticipating receiving a reimbursement of approximately $68.4 million in 1990.

QUESTION SUBMITTED BY SENATOR ROBERT C. BYRD

Drug Abuse Training

QUESTION: The drug problem in the United States is of immense magnitude and its solution should be one of the nation's highest priorities. Fighting this problem will require a massive effort on the part of a number of Federal Government agencies and will require an increasing number of well-trained personnel.

It is my understanding that beginning with FY 1990, the Federal Bureau of Investigation and the Drug Enforcement Administration will not be able to satisfy all of their respective training requirements at the FBI Training Academy in Quantico, Virginia.

What plans exist for assuring that the DEA will be able to meet all of its training needs in the coming fiscal year?

I am advised that there may be a long-term need to construct a new National Drug Enforcement Training Center to provide the DEA with the desirable and necessary training complex to carry out its important mission. What is the status of a decision whether to construct such a facility?

I understand that one of the options being considered for a DEA training facility is the utilization of an existing vacant military facility or existing school buildings. This would appear to be a short-sighted solution to the broader long-term goal of providing a first rate state-of-the-art training facility for DEA trainees and State and local law enforcement officers which will prepare them to carry out their important and dangerous duties. Would it not be preferable and even mandatory to design and build a facility for DEA's needs which would incorporate the agency's unique requirements in the expanding war on drugs?

To what extent and at what level, has the agency developed a program of requirements for training facilities? Please provide for the record a specific plan, including land requirements, size of the facility description of the building components, numbers of DEA agents and staff to be accommodated, and special needs such as aircraft runways as security arrangements, at any new National Drug Enforcement Training Center.

May I have your assurances that you will keep me fully informed on the progress regarding this matter?

ANSWER: DEA's 1990 budget request now before Congress contains a $4 million request for expanded in-service drug law enforcement training. This increase will ensure that DEA will be able to meet most of its in-service training needs in the coming fiscal year. Although space restrictions at the FBI Academy prevent DEA from conducting a sufficient quantity of in-service and State and local training at the FBI Academy, DEA plans to continue basic agent training at Quantico for the foreseeable future.

DEA's training needs have been discussed with me. DEA has been researching the possibility of obtaining a vacant military facility or other site to use as an additional training site for in-service and State and local drug law enforcement training. DEA has not yet secured such a facility.

DEA has not developed a specific plan for a training facility, and therefore the information you request on a detailed "program of requirements" is not available at this time.

I assure you that DEA will keep you fully informed on all progress relating to this matter.

QUESTIONS SUBMITTED BY SENATOR TED STEVENS

DEA Questions

QUESTION: Over the past year, Alaska has become a haven for drug dealers, particularly our largest city of Anchorage. The Crips and the Bloods have moved in from Los Angeles because they can sell crack in Anchorage at three times its Los Angeles street value. Chief O'Leary, the head of the Anchorage Police Department, told me recently they are bringing down an average of two crack houses a week.

If a map of Alaska were superimposed on a map of the continental United States, it would stretch from California to Washington, D.C. and from the Canadian border to the Mexican border. You indicated in your statement that the DEA budget request if approved would fund 5,409 positions including 2,313 special agents. With that many agents and a geographic area one-fifth the size of the rest of the country, why are only three special agents stationed in Alaska? How can three men cover any area one-fifth the size of the United States?

ANSWER: The exact deployment of personnel among the various States is determined by the method long used by DEA to distribute its Special Agent resources -- the annual staffing review. Differences among Special Agent allocations throughout the United States are based on the underlying rationale of the staffing review; i.e., that limited resources necessitate that DEA concentrate on those drug investigations having the greatest overall national and international drug traffic. This strategy requires the concentration of Special Agents in major source and transshipment areas. A primary purpose of this review is to identify those areas of the country which are in greater need of investigative resources and in which the greatest impact on drug trafficking can be realized. The Annual Staffing Review provides a forum in which to examine all requests (e.g., letters from Congressmen, United States Attorneys, and other Federal, State and local officials, as well as input from DEA's Special Agents in Charge) in relation to the total number of positions available, the needs of all other offices, and related matters. Other factors taken into consideration include (1) the extent of the drug problem in a particular area, (2) the amount of overall enforcement activity within that area, (3) drug trafficking trends and future problem areas, (4) performance of DEA offices in comparison to similar size and location of offices, and (5) unquantifiable influences on DEA office activities, (e.g., personnel changes, lengthy wiretap investigations, and formal and informal State and local participation). These factors are the primary determinants in decisions to bolster, establish, close or reduce DEA offices. DEA makes every possible effort to ensure that our Special Agents are distributed equitably throughout the country. Alaska has and will continue to receive fair and equitable treatment in the review process.

QUESTION: You acknowledged in your statement that agents have been diverted from regular domestic operations to staff foreign special enforcement operations, creating a strain on the capabilities of domestic offices. That policy has really hurt Alaska.

One of our three special agents has been on special assignment overseas almost since he got there, and now has been transferred permanently. I might add that the third agent was transferred to Alaska after I complained about the woefully low staffing levels. A third agent was added on paper, but he did not operate out of Alaska. If your request to expand overseas offices is approved, will you replace that third agent in Alaska?

ANSWER: Once 1990 resources are known, we will conduct the annual staffing review. Based on that review Alaska will receive a fair distribution of Special Agents based on the various factors discussed above.

QUESTION: You are requesting $4.2 million and 27 positions for a State and Local Task Force program. What are the objectives of this program and how will it work?

ANSWER: The Federal Government's highest enforcement priority is to stop the major drug suppliers by suppressing the production, transshipment, and distri-bution of illicit drugs at the soonest possible point. If we are able to concentrate our efforts at this level, it will ultimately assist the street-level enforcement effort. However, we have long maintained that it is the responsibility of the Federal Government to facilitate intergovernmental cooperation, which DEA accomplishes principally through the State and Local Task Force program. This program allows us to increase training to State and local officers, exchange intelligence, equipment, and investigative techniques, and develop cooperative cases.

The State and Local Task Force program has been very successful at increasing the cooperation between Federal, State, and local law enforcement agencies in the fight against drug trafficking. This cooperation allows local law enforcement to attack higher level traffickers than would otherwise be possible without this degree of cooperation. The program also makes significant contributions through the development of intelligence, particularly in reference to violators that were previously unidentified. Perhaps the most meaningful measure of success for the State and local law enforcement agencies is the ability to generate substantial revenues through equitable sharing of asset forfeitures for their participation in Federal investigations. The task forces seized more than three times the amount that the entire program cost the Federal Government in 1988. In 1988, DEA was the originating agency for $78.6 million in cash and property shared with State and local governments.

QUESTION: You have indicated that DEA was the originating investigative agency for $78.6 million in cash and property shared in 1988 with State and local governments. How much of these assets were shared with law enforcement agencies in Alaska?

ANSWER: Separate figures are not available for each agency; however, of $103.9 million shared by the Department of Justice with State and local governments in 1988, $339,812 was shared with law enforcement agencies in Alaska.

QUESTIONS SUBMITTED BY SENATOR ROBERT W. KASTEN, JR.

SNOWCAP

QUESTION: Mr. Lawn, could you please give us a brief update on Operation SNOWCAP, the effectiveness of the program as you see it, and what expansion of the program you see if you are provided with the resources you seek?

ANSWER: About 180 agents are involved in Operation SNOWCAP, including Headquarters program coordinators and agents who are sent to South America for 90-day rotational assignments. Before each assignment to South America, the agents receive extensive training in tactical techniques, Spanish language, and safety survival methods. These courses were developed and are continually being revised to suit the needs of Operation SNOWCAP.

Statistical accomplishments from April 1987 through September 1988 are as follows:

- 146 hydrochloride laboratories destroyed;
- 3,500 cocaine paste and base labs destroyed;
- 35,000 kilograms of cocaine hydrochloride seized;
- 52,000 kilograms of coca paste seized;
- 28,000 kilograms of cocaine base seized;
- 575,000 gallons of essential chemicals seized, capable of producing 125 metric tons of cocaine; and
- seizures of 79 aircraft, 37 boats, 819 vehicles, and $5.3 million in currency.

Equally important are the intelligence contributions of the initiative and the level of disruption it is creating in the cocaine trafficking network.

In 1988, DEA spent a total of $6.4 million on direct costs of SNOWCAP operations: $2.7 million on operating expenses and the purchase of evidence and information; $3 million on aviation support, and $731,000 on training and firearms. When indirect costs are added to these direct expenses, the total cost of SNOWCAP is estimated to have been $10 million for 1988.

In 1989 to date, DEA has spent $3.9 million on direct costs of SNOWCAP: $2.2 million on operating expenses and the purchase of evidence and information; $1.3 million on aviation support; and $413,000 on training. DEA is also providing $4 million to fund the retrofitting and operational costs of six helicopters to be sent to Peru and Bolivia in 1989, $2 million of which is provided by the Department of Justice Assets Forfeiture Fund. The total cost of SNOWCAP operations in 1989 is expected to be $15 million, including the $2 million in retrofitting expenses.

DEA does not anticipate, at this time, major expansion in Operation SNOWCAP activities in 1990; however, the SEO program will likely expand in other areas within existing resources. DEA will continue Operation SNOWCAP at current resource levels.

QUESTION: Again with respect to a program of another agency, what has been the effectiveness of the AID program to provide for alternate crops, and thus alternate sources of revenue, for the peasants who are now realizing hugh profits growing coca?

ANSWER: The AID task of providing incentives for peasants to grow crops other than coca is an extremely difficult one. As long as United States citizens have an appetite for cocaine, and the distribution networks continue to supply that appetite with cocaine from South America, the profits from coca production will be much greater than those obtained from any other crop. The program will only be successful when combined with an aggressive program of United States drug demand and supply reduction efforts (including source country eradication, suppression, and enforcement). DEA is unaware of any official estimates of the effectiveness of the program.

QUESTIONS SUBMITTED BY SENATOR DENNIS DeCONCINI

Drug Enforcement Training Requirements

QUESTION: I understand that the existing DEA training center at Quantico is no longer capable of providing the level of training necessary for your law enforcement personnel. What is the situation at Quantico -- how many students are presently trained there and how does this compare to your demand for training?

ANSWER: The FBI Academy at Quantico currently has a capacity of 212,000 student days (student days represent the total number of students in any class multiplied by the number of training days). By 1995, we project that the total training requirements will amount to a need for 248,600 student days, leaving a deficit of 36,600 days. These projections assume no increases in Special Agents for either the FBI or DEA, and that Special Agent hiring will only replace those leaving through attrition. The needs in 1990 will vary, depending on the number of agents that are approved by the Congress for both agencies.

QUESTION: I know the DEA has had under consideration various alternatives to meet your training needs. Can you tell me about the various options under consideration and explain what level of training would be provided and the costs for the training?

ANSWER: DEA's 1990 request before Congress includes $4 million to meet in-service training needs. Several options are under consideration including the possibility of obtaining a vacant military facility or school that would satisfy our in-service, State and local, and international drug law enforcement training requirements. We have also approached the Marine Corps about the possibility of expanding the FBI Academy at Quantico to accommodate our additional drug law enforcement training needs. Basic agent training, and other types of core training programs, would continue to be taught at the FBI Academy. As a plan has not yet been developed, cost estimates are not available.

QUESTION: At one time, the Federal Law Enforcement Training Center provided law enforcement training for DEA

personnel. Can you tell me why DEA left the Center? Was FLETC unable to meet your training demands? If so, in what ways?

ANSWER: DEA left the Federal Law Enforcement Training Center (FLETC) for one primary reason: the co-location of FBI and DEA training was consistent with joint agency initiatives to avoid duplication of efforts and improve the effectiveness of investigative operations. While FLETC met our basic training needs, the quality of training improved substantially upon co-location with the FBI.

QUESTION: As you may know, the Congress has strongly supported the concept of consolidated law enforcement training. In that respect, the House and Senate Appropriations Committees have directed FLETC to develop a long-term facilities master plan to accommodate growing training needs of most Federal agencies. In the FY 1989 Treasury Appropriations Bill, FLETC was instructed to initiate construction on a facility to provide advanced firearms training, which cannot be accommodated through existing FLETC facilities. That plan is still under review at the Department of Treasury, although I anticipate there will be a final decision in the near future. Can you tell me what your present training requirements are for all levels of training? Please break this out by basic, advanced and other advanced training.

ANSWER: The levels of training vary from year to year, depending on available funding and the number of new core positions DEA receives. In general, special agent attrition requires us to train approximately 160 basic agents per year. Our basic agent training course is currently 13 weeks. In addition, we train several classes of diversion investigators, intelligence analysts, chemists, firearms instructors, and advanced agents each year.

Our in-service needs are extensive, particularly given that 50 percent of our investigative workforce has less than five years of experience. Courses include clandestine laboratory enforcement training, advanced raid planning, asset seizure undercover operations. These courses vary with the needs of the agency. Non-agents also receive training in a variety of areas, such as computer and supervisory training.

QUESTION: Have you had any discussions with FLETC on the possibility of using FLETC facilities for your training requirements? If so, what has been the result? If not, why not?

ANSWER: The DEA Office of Training has discussed our training needs with FLETC. Discussions with FLETC are continuing.

QUESTION: In your consideration of various alternatives for training, have you analysed what the cost would be by making use of FLETC versus the development of a new DEA training center? If not, please explain why you have not conducted a cost study?

ANSWER: DEA has not conducted a study of the costs of making use of FLETC versus the development of a new DEA training center. DEA is still assessing several options for meeting its in-service training needs. Cost estimates are not yet available.

QUESTION: When will you be making a final decision on your training site?

ANSWER: A decision on how DEA will expand its training capacity is expected to be made in the next several months so that it may be considered in our 1991 budget request.

Cross Designations in Puerto Rico

QUESTION: I recently learned that the DEA is not cross-designating any Customs agents in Puerto Rico for investigations which fall under Section 881 of Title 21 of the U.S. Code. Can you tell me why this is the case in Puerto Rico? Has Customs asked for cross-designation, to you knowledge? If so, what has been the response from the DEA?

The reason I am concerned about the cross-designation of Customs agents is that it appears DEA is understaffed in Puerto Rico. At the same time, however, DEA is cross-designating personnel from the Puerto Rican police force known as "FURA". I don't understand why DEA would cross-designate "FURA" personnel but not Customs. Perhaps you can enlighten me.

ANSWER: DEA has not cross-designated Customs Agents in Puerto Rico under Title 21 Section 881 for two reasons: (1) Customs has not requested such cross-designation, and (2) there has never been a need for such cross-designation. However, discussions between DEA and Customs officials in Puerto Rico are now being held to review the details of such an arrangement as a possible future need for an airport detail.

For the past eight years, DEA has been engaged in State and local task force activity in Puerto Rico. Currently, this task force involves 18 Puerto Rico Police Department officers who have been deputized by DEA.

QUESTIONS SUBMITTED BY SENATOR PETE V. DOMENICI

Agent Staffing in New Mexico

QUESTION: Administrator Lawn, I am dismayed to learn that of the total Drug Enforcement Administration (DEA) full-time equivalent (FTE) personnel level estimated at 2,945 nationwide by the end of FY 1989, only 20 are assigned to the State of New Mexico. This compares with 62 FTE in Arizona, 241 FTE in Texas, and 333 in California.

How many FTE are in fact authorized for the State of New Mexico in FY 1989? How many FTE are actually on board in the State? I understand there may actually be only 16 DEA personnel in the entire State of New Mexico. Has the DEA staffing situation in New Mexico been affected by the deployment of agents to temporary duty assignments, such as operation SNOWCAP in Peru?

ANSWER: There are 21 DEA Special Agents currently authorized for the State of New Mexico. Twenty are now on board. In order to determine the equitable Temporary Duty Assignment (TDY) tasking of each field division, DEA maintains a TDY Tasking and Control System. This system provides a rational method of distributing the burden of TDY assignments and provides a record of each DEA office's contributions that can be considered during the Annual Staffing Review process. There are no DEA agents from New Mexico currently assigned to Operation SNOWCAP.

QUESTION: What is DEA's rational for the discrepancy in the deployment of personnel among the various States along the Southwest border?

Why does Arizona, for example, have three times the number of DEA personnel as New Mexico when the land borders are approximately the same in the two States, and Arizona has a transportation network only three-fifths the size of that in the State of New Mexico? In addition, on September 10, 1988, the top DEA official in New Mexico predicted that "New Mexico will lead the nation in the [illicit] production of methamphetamine by the end of next year."

ANSWER: The exact deployment of personnel among the various states along the Southwest border has been determined by the method long used by DEA to distribute its Special Agent resources -- the Annual Staffing Review. Differences among Special Agent allocations throughout the United States are based on the underlying rationale of the Staffing Review -- i.e., limited resources necessitate that DEA concentrate on those drug investigations having the greatest overall impact on the national and international drug traffic. This strategy requires the concentration of Special Agents in major source and transshipment areas.

You note that Arizona has three times the number of agents as New Mexico. This is primarily because DEA has a divisional office in Phoenix. States with divisional offices usually have higher agent totals than those without divisional offices. New Mexico is part of the Denver Division which provides many support services to the Albuquerque and Las Cruces Resident Offices. This includes temporary duty assignments of agents from other areas of the Division if a particular case warrants it. Approximately 25 percent of the special agent workhours for the Denver Divisions were expended in New Mexico.

QUESTION: How does DEA allocate its resources to the various States? What procedure, criteria, and workload factors do you use in assigning DEA law enforcement personnel along the Southwest border?

ANSWER: As a means of regularly assessing Special Agent allocations throughout the United States, DEA conducts the Annual Staffing Review. A primary purpose of this review is to identify those areas of the country which are in greater need of investigative resources and in which the greatest impact on drug trafficking can be realized. The Annual Staffing Review provides a forum in which to examine all requests (e.g., letters from Congressmen, United States Attorneys, and other Federal, State and local officials, as well as input from DEA's Special Agents in Charge) in relation to the total number of positions available, the needs of all other offices, and related matters. Other factors taken into consideration include (1) the extent of the drug problem in a particular area, (2) the amount of overall enforcement activity within that area, (3) drug trafficking trends and future problem areas, (4) performance of DEA offices in comparison to similar size and location of offices, and (5) unquantifiable influences on DEA office activities, (e.g., personnel changes, lengthy wiretap investigations, and formal and informal State and local participation). These factors are the primary determining elements in decisions to bolster, establish, close or reduce DEA offices. These factors are thus the basis of the assignment of Special Agents not only along the Southwest border, but also throughout the United States.

QUESTION: Of the requested 3,109 DEA agent staffing year-end strength requested in the FY 1990 budget, how many do you estimate would be deployed along the Southwest border and, specifically, to each of these four States?

ANSWER: At this point, it is premature to speculate how the FY 1990 Special Agent staffing will be deployed throughout the United States. The final decision for such deployment is normally made after a thorough review of the Staffing Review data pertaining to the previous fiscal year.

SUBCOMMITTEE RECESS

Senator **Hollings**. If there are no further questions, this concludes the hearing for today. The subcommittee will stand in recess until Thursday, April 6, when we will hear from the Securities and Exchange Commission. Thank you very much, Mr. Lawn.

Mr. **Lawn**. Thank you, Mr. Chairman.

Senator **Kasten**. Thank you.

[Whereupon, at 11:55 a.m., Thursday, March 16, the subcommittee was recessed, to reconvene at 10:30 a.m., Thursday, April 6.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1990

THURSDAY, APRIL 6, 1989

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10:35 a.m., in room S–146, the Capitol, Hon. Ernest F. Hollings (chairman) presiding.

Present: Senators Hollings, Bumpers, Rudman, and Kasten.

SECURITIES AND EXCHANGE COMMISSION

STATEMENT OF DAVID S. RUDER, CHAIRMAN

ACCOMPANIED BY:
  GEORGE G. KUNDAHL, EXECUTIVE DIRECTOR
  LAWRENCE H. HAYNES, COMPTROLLER

OPENING REMARKS

Senator HOLLINGS. This morning, the subcommittee will consider the 1990 budget of the Securities and Exchange Commission. The request is for $168,700,000, an increase of 18 percent over the current level of $142,600,000. The increase provides for an additional 184 new positions.

Appearing on behalf of the Commission is the Chairman, David S. Ruder. Accompanying Mr. Ruder is Mr. George Kundahl, the Executive Director, and Larry Haynes, the Comptroller.

Mr. Ruder, we have your statement. It will be printed in full in the record, and you can highlight it if you wish.

Mr. RUDER. Thank you, sir. My preference is to direct your attention to the charts that are on pages 2 and 3 of the statement. Essentially, if you look at page 2 and compare 1980 to 1988 or 1980 to 1990, you will see a dramatic increase in all of the activities which are regulated by the Securities and Exchange Commission while at the same time, if you look at the staff years devoted to those activities, you will see that they are more or less equal, particularly when you compare 1980 to 1988.

Senator HOLLINGS. They are constant?

Mr. RUDER. They are constant, and if you look at the total staff years on page 3, you will see that between 1980 and 1988 the total staff years devoted to Commission activities rose from 2,041 to 2,048, which is virtually no increase.

We have been authorized in 1989 to increase our staff years to 2,131, but because we had to absorb pay raises and other items, our actual figure, as indicated by the footnote, is something like 2,050 to 2,070.

My analysis is that in the past years the Securities and Exchange Commission has become what some of us like to call lean and mean, but that we are at a point where we have achieved all of the efficiencies that we can, and that we are now beginning to have dramatic shortages in work product.

Just by way of illustration, our ability to engage in investment advisor inspections is down to a point that we can only inspect investment advisors 1 year out of every 11. Our ability to review the financial statements of corporations in the United States is such that we continue to be unable to meet our goal of giving a full review to the financial statements of one-third of our corporate filers each year.

Senator HOLLINGS. How many years would you think is right? When you are giving us the shortfalls and the deficiencies, tell us what would be adequate, so I will have it in the record. Do you think you ought to do it every year?

Mr. RUDER. Not every year, but it is very hard to say when the time comes that the management of corporations will realize that we are not able to be regularly reviewing them. I think we ought to be assured that we can review one-third of our registrants every year. When we get past that for some registrants, we have gone too far, and we are at that now.

Senator HOLLINGS. Go ahead. Continue.

Mr. RUDER. In the broker-dealer area, where we have self-regulatory organizations, we have achieved efficiencies by asking the National Association of Securities Dealers and the New York Stock Exchange to do our broker-dealer inspections for us.

But as their inspection programs have increased in efficiencies at our urging, we are now getting more referrals from them, which increases our enforcement work, and we are not able to do as much followup examination of those broker-dealer examinations as we would like to.

Turning to enforcement, it is very difficult to quantify enforcement problems, but the increasing complexity of the litigation and the investigations that we are involved in, and the proliferation of the penny stock fraud in this country have put a dramatic squeeze on our enforcement activities. To the extent that we turn, as we will, enforcement energies to the complicated cases and the penny stock fraud cases, we necessarily reduce our coverage of the ordinary fraud matters. We simply cannot be in the position where the securities professionals or even the nonprofessionals believe that we don't have the resources to engage in adequate enforcement.

PREPARED STATEMENT

Senator HOLLINGS. Thank you, sir. We will place your prepared statement in the record at this point.

[The statement follows:]

STATEMENT OF DAVID S. RUDER

Chairman Hollings and Members of the subcommittee: The Securities and Exchange Commission is pleased to appear today to present its fiscal 1990 budget request of $168.7 million, an increase of 18 percent over the 1989 appropriation of $142.6 million.

The regulatory role of the SEC in the Nation's financial markets is very broad. In brief, the primary tasks of the Commission involve:

Full Disclosure.—Reviewing registration statements, annual reports, proxy statements, tender offer materials and other filings for approximately 14,000 public companies, and assisting in setting accounting standards for those companies;

Market Regulation.—Regulating the securities industry, including broker-dealers and self-regulatory organizations;

Investment Management.—Supervising investment companies and investment advisers and regulating interstate public utility holding companies;

Enforcement.—Investigating and initiating civil injunctive actions and administrative disciplinary proceedings involving securities law violations.

Since 1980 the multitude and magnitude of the tasks faced by the SEC have grown dramatically, while during the same period its staff has grown very little. Today the Commission is very efficient in its operations, but its resources are strained and it is not able to take the innovative steps necessary to oversee our Nation's securities markets in a sound manner.

A NUMERICAL VIEW OF SEC TASKS AND STAFF

The problems faced by the SEC in supervising constantly expanding securities activities are best illustrated by comparing the dramatic growth in activities the SEC regulates with the lack of growth in SEC staff size.

PRIMARY SEC ACTIVITIES

	1980	1988	1990 [1]
Full disclosure:			
1933 act new registration statements	710	1,671	1,700
Annual reports filed	8,344	11,443	12,500
Tender offer schedules filed	104	794	800
Staff years	420	399	434
Market regulation:			
Registered broker dealer firms	6,750	12,140	13,500
Broker dealer branch offices	7,370	21,400	24,000
Registered representatives	196,000	460,000	500,000
Staff years	268	244	291
Investment management:			
Registered investment companies	1,461	3,500	3,700
Investment co. regist. statements	378	1,569	1,527
Registered investment advisers	4,580	14,120	15,000
Staff years	195	213	257
Enforcement:			
Administrative proceedings opened	70	109	118
Civil proceedings opened	128	143	154
Matters under inquiry	[2] 738	1,038	1,120
Staff years	664	665	719

[1] For 1990 activity levels are estimated and staff levels are those contained in the SEC Fiscal 1990 Budget Estimate.

[2] As of 1981.

SEC STAFF YEARS

Set forth below are comparisons of SEC actual staff years levels for the entire agency for 1980 and 1988, the appropriated levels for 1989, and levels requested in the presidential budget for 1990.

	1980	1988	1989	1990
Full disclosure (Excluding electronic filing and information services)	420	399	420	434
Market regulation	268	244	264	291
Investment management	195	213	221	257
Enforcement	664	665	695	719
Other agency activities:				
Electronic filing		37	41	55
Information services	14	24	25	32
Public utility regulation	20	14	14	16
Legal services	146	114	121	126
Economic analysis	42	39	41	38
Program direction	240	260	269	281
Temporary positions	32	39	20	20
Total staff years	2,041	2,048	[1] 2,131	2,269

[1] In fiscal 1989, the Commission expects only to reach a figure of 2,050 to 2,070 staff years, primarily because it was required to absorb the January, 1989 pay raise.

The statistical comparisons place in stark reality the fact that since 1980, Commission regulated activities have increased dramatically, while the Commission's staff has increased very little. Between 1980 and 1988, the Commission's staff grew by less than 1 percent, from 2,041 staff years to 2,048 staff years. Although the 1989 appropriated budget has a target of 2,131 staff years, the Commission presently expects to reach a figure of only 2,050 to 2,070 staff years in 1989, primarily because it has had to absorb the $3.7 million cost of the January 1989 pay raise.

Illustrations of resource restraints on the Commission's ability to perform its functions are numerous. A few examples demonstrate the problem.

Litigation.—As you know, after 2 years of investigation the Commission filed a multi-count complaint against the brokerage firm Drexel Burnham Lambert, Inc. and against four individual defendants. We are currently involved in settlement negotiations with Drexel, but even if that settlement occurs, the Commission still faces large costs for probable litigation against individual defendants. The Drexel litigation is illustrative of the enormously complicated and expensive enforcement environment now faced by the Commission.

Market Regulation.—The October 1987 market break dramatically emphasized the Commission's role in the regulation of financial markets. Our Division of Market Regulation is so absorbed with both its normal regulatory duties and additional needs to monitor improvement of market systems, that it has not been able to establish a vitally needed capital markets unit within the Division.

International Securities Regulation.—The SEC recently has become increasingly involved in international securities regulation matters, including enforcement activities regarding cross border fraud, harmonization of disclosure and accounting standards, international capital adequacy standards, regulation of intermarket trading and clearance links, and activities of international securities regulatory organizations such as the International Organization of Securities Commissions. All of these activities create demands on staff time and travel budgets.

Public Utility Regulation.—Commission responsibilities under the Public Utility Holding Company Act of 1935 provide an important example of the imbalance between workload and resources. Three weeks ago, the CEO's of three of the largest public utility holding company systems in the United States came to my office for the purpose of asking me to assign additional staff to review filings made under the 1935 Act. They were concerned because our small Public Utility staff is unable to respond promptly to exemptive and rule making requests. I was unable to accede to their request because the staff problems they are encountering are common to every one of the Commission's functional areas.

BUDGET CONSIDERATIONS

During the period 1980 to 1988, fees generated by SEC regulated activities grew from $49 million to $249 million, and they are expected to increase in 1989 and 1990. The $249 million figure should be compared with a Commission authorized budget of $143 million in 1989 and a Presidential Budget recommendation for a Commission appropriation of $169 million for 1990.

The Commission fully recognizes the challenges facing the Appropriations Committee in reducing the Federal deficit. At the same time, the Commission is mindful of the funding surplus generated by fees collected under the Federal securities laws.

I have testified elsewhere on the option of making the SEC self-funding. My primary objective is not to remove the agency from the budget process. Rather, it is to obtain the resources necessary to allow the Commission to exercise its statutory responsibilities successfully. For 1988 and 1989, the President proposed that the SEC be funded at $145 million and $160.9 million. The Congress appropriated $135.2 million and $142.6 million in these years. We urge Congress not to make any reduction in the $168.7 million designated for the SEC in the President's Budget for 1990.

With me at the table today are George Kundahl, the Executive Director of the Commission, and Larry Haynes, the Comptroller. We will be pleased to answer any questions you may have.

FEES AND FINES

Senator **Hollings**. Overall, how much are you bringing in? You know we have agencies that take in large amounts of fees. The Patent Office more than pays for itself. We learned from our hearing on the DEA drug enforcement that the seizures and sales from those seizures is more than we are paying for DEA. They are not a cost to the Government.

I think the Securities and Exchange Commission, with the stepped-up enforcement that you and your administration brought about, is more than paying for itself, or if we can really score on the *Milken* case, you might give us a surplus.

Do you have any way to measure what you are clearing? Is this the chart here? At this point, the chart entitled "SEC Fees and Fines" will be inserted in the record.

[The chart follows:]

SEC FEES AND FINES

[In thousands of dollars]

	1933 act fees	1934 act fees	Other fees	Total fees	Total appropriation	Fees in excess of appropriation	Fines [1]
1984	60,124	37,206	23,652	120,982	94,000	26,982	
1985	75,795	37,087	30,820	143,702	106,382	37,320	158
1986	133,671	45,269	36,416	215,356	106,323	109,033	3,731
1987	160,588	65,017	38,309	263,914	114,500	149,414	[2] 62,588
1988	122,136	86,201	40,608	248,945	135,221	113,724	1,178
1989	110,000	102,000	40,000	252,000	142,640	109,360	
1990	102,000	121,000	40,000	263,000	168,707	94,293	

[1] Fines are amounts imposed under the Insider Trading Sanctions Act of 1984.

[2] Includes $50 million from Boesky settlement.

FEES AND FINES

Mr. **Ruder**. That shows our fees, I think, from three sources: 1933 act registrations; 1934 act fees, essentially tender offer matters; and transactions on the various exchanges. We bring in, through those fees, and this is not enforcement activities, approximately $250 million.

Senator **Hollings**. And your budget is only, what, $160 million?

Mr. **Ruder**. Well, $142, and we are asking for $168 million. These fees do not count the revenues that come to the Government from our enforcement activities.

Senator **Rudman**. You say it does not count those?

Mr. **Ruder**. That is not included in those figures.

Senator RUDMAN. It says fees and fines of $263 million are estimated.

Mr. RUDER. Fines, yes, there are fines on the right-hand column.

Senator RUDMAN. Right.

Mr. RUDER. But the number that I look at is the total fee number, which you will see for 1989 was $252 million.

Senator RUDMAN. All right.

Mr. RUDER. And we estimate, for 1990, fees of $263 million.

Senator RUDMAN. What were the additional fines and so forth? Do you have that for us?

Mr. RUDER. It is over in the right-hand column. Our biggest year, 1987, was the year in which we had fines from Ivan Boesky and Dennis Levine. The number reached $62 million. We expect, if all goes well, if settlement with Drexel occurs, that there will be $300 million contributed in this fiscal year by Drexel to the U.S. budget.

Senator RUDMAN. That is in addition to the $263 million, which is——

Senator HOLLINGS. In addition to $252 million.

Senator RUDMAN. That is right.

Mr. RUDER. That is for 1989, that is right.

Senator RUDMAN. I understand.

Mr. RUDER. The U.S. attorney will take full credit and we will take full credit.

Senator RUDMAN. We have a number of reasons for asking the question. We are trying to meet our targets for this year. We are trying to see if you can help.

Senator BUMPERS. Let me go get Phil Gramm here. Let me make sure we have the troika here.

Senator HOLLINGS. If we could only give you your full request, we will make more money.

Senator RUDMAN. That is exactly right.

Senator HOLLINGS. And to cut this particular budget in the light of the enthusiasm and the conscientious job being done by Mr. Ruder and the staff over there, would be sheer stupidity.

Senator RUDMAN. We agree, Mr. Chairman.

Senator HOLLINGS. The more I give you, the more money I make. It is a wonderful deal.

Mr. RUDER. We believe that, if Drug Enforcement Administration and FBI enforcement budgets should not be decreased or should be increased, we should also be treated as an enforcement agency, which we really are, and I believe that the protection of our financial markets is of prime importance, and that is what we do.

DREXEL CASE

Senator HOLLINGS. Let's get into the costs. You mentioned, for example, the *Milken* case. How much is that going to cost us? Is that a 2-year case? You have got to guess, in some measure, I imagine, because you don't know. They might have a settlement, and there is a prosecution involved or a large bond and everything else from what I have seen in just a cursory fashion.

Can you tell the committee what is in the cards there, since you mentioned that case, about the cost of enforcement time and the man hours and so forth?

Mr. Ruder. Yes, sir; I want you to know that we are relatively cheap in terms of our cost per hour compared to the Drexel attorneys.

Senator Hollings. You are the first chairman I have ever seen appear here that says he has a cheap staff. Very good.

Mr. Ruder. But we have estimated that already on the Drexel matters, which includes our case against Milken, we have expended something like $2.6 million, and we expect to continue that investigation and we expect either to be investigating or litigating in that case for several years to come. So I have to estimate those costs in the million dollar range in the future.

Senator Hollings. Yes, sir; is it that you are setting an example or will you make a recovery or both on Milken? Let's assume he were convicted just for the sake of the question. Will the Government make any recovery that you have of those resources?

Mr. Ruder. I am under very severe constraints to talk about individual cases.

Senator Hollings. All right.

Mr. Ruder. I would expect that the U.S. attorney would seek financial recovery from Mr. Milken. I know that their RICO claim is in the $1 billion plus range, so I would doubt very much that they would settle for a modest amount.

PUBLIC UTILITY HOLDING COMPANIES

Senator Hollings. I see. With respect to Edgar, the automated filings, that $5 million is now identified that we can diminish the request. We don't have to be over smart on that one.

The public utility holding companies, now, there we are dragging. We are not as asiduous, as I understand it with the public utility holding companies. Their particular petitions and filings have to await your ruling, whereas the others continue on until you tell them to stop.

In this instance, there is a tremendous backup, so much so that the public utility holding companies have allowed that they would be glad for fees to be increased to get the $600,000 required to take care of this backlog.

Now, how do we go? We are praising you in the one breath and we are making all of this money, and then we, oh, just for $600,000, we have a tremendous backlog? Can't you clean that up?

Mr. Ruder. Well, sir, I would like to give special attention to the public utilities, but we are squeezed in all areas. I may say I have not only had a visit from some CEO's from the public utility holding companies, but I have had David Silver from the Investment Company Institute also complaining about the lack of staff attention to exemptive requests and rulemaking in the investment management area and others.

So I have tried to allocate additional staff to the Public Utility Holding Company Act, but it just is extremely difficult to do so.

Senator Hollings. Now let's make it easy; what would be required?

Mr. RUDER. Well, we think that an addition of 8 staff years would give us a very good leg-up on what we are doing.

Senator HOLLINGS. And the cost for the 8 staff years?

Mr. RUDER. It is roughly $500,000, I think $500 million. [Laughter.]

Senator RUDMAN. This is not the defense budget, Mr. Chairman. [Laughter.]

Senator HOLLINGS. We have already saved that $5 million, for example, on Edgar right now. We can take that money and start allocating and step it up. You don't want to have a wonderful record there and like Bossie the cow, kick the pail over on the public utilities and just have a tremendous backlog and a crowd staged to run around the country saying you are incompetent.

Mr. RUDER. I don't like that at all.

Senator HOLLINGS. For $500,000, what gives? I think the committee would be sympathetic to some kind of approach immediately to get that cleared out.

Mr. RUDER. We are already increasing that staff by two, which may not sound like a lot, but it is a more than 10 percent increase in that staff, and we are going to try to work on it.

LETTER FROM CHAIRMAN OF COLUMBIA GAS SYSTEM

[CLERK'S NOTE.—The following letter from John H. Croom, chairman and president of the Columbia Gas System was received subsequent to the hearing. By direction of the chairman, the letter has been printed in the record.]

[The letter follows:]

LETTER FROM JOHN H. CROOM, CHAIRMAN AND VICE PRESIDENT, COLUMBIA GAS SYSTEM

April 17, 1989

The Honorable Ernest F. Hollings
Senate Committee on Appropriations
Subcommittee on Commerce, Justice, State, the Judiciary
  and Related Agencies
U. S. Senate
Room S-146A
U. S. Capitol
Washington, D.C.   20510

Dear Senator Hollings:

A lack of adequate funding for the Office of Public Utility Regulation (OPUR) at the Securities and Exchange Commission is resulting in serious delays in processing applications for the 12 registered holding company systems regulated under the Public Utility Holding Company Act of 1935. The lack of adequate funding has caused a shortage of key staff which not only will result in the backlog of cases at OPUR growing by 400% between 1988 and 1990, but also will cause delays in the authorities that are issued. These delays are putting these 12 systems at a competitive disadvantage in reacting to dynamic changes in the market for energy and in serving their shareholder and customer interests. Subsidiaries of these systems serve over 18 million electric and gas customers in 29 states.

We respectfully urge that the Appropriations Committee increase funding for the SEC Office of Public Utility Regulation by $600,000 per year in order to provide for proper administration of the Act.

Attached is a copy of the testimony presented on behalf of the 12 systems in the House Appropriations Subcommittee on Commerce, Justice, State and the Judiciary hearings on April 12. If I can answer any questions, please contact me or Rick Casali at our Washington Office at 842-7403.

Thank you for your assistance.

Sincerely,

John H. Croom

John H. Croom

STATEMENT OF JOHN H. CROOM

GOOD AFTERNOON MR. CHAIRMAN AND SUBCOMMITTEE MEMBERS. MY NAME IS RICHARD A. CASALI, VICE PRESIDENT OF COLUMBIA GAS SYSTEM. OUR CHAIRMAN, JOHN CROOM, WAS SCHEDULED TO TESTIFY TODAY, BUT A PRESSING MATTER DETAINED MR. CROOM. THE COLUMBIA GAS SYSTEM, INC. IS A NATURAL GAS UTILITY HOLDING COMPANY REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935. I AM TESTIFYING ON BEHALF OF COLUMBIA AND THE OTHER ELEVEN REGISTERED ELECTRIC AND GAS UTILITY HOLDING COMPANIES WITH RESPECT TO PROPOSED ADDITIONAL FUNDING FOR THE OFFICE OF PUBLIC UTILITY REGULATION AT THE SECURITIES AND EXCHANGE COMMISSION.

ALTHOUGH WE ARE ONLY TWELVE COMPANIES, OUR ELECTRIC UTILITY SUBSIDIARIES REPRESENT ABOUT 25% OF THE NATION'S ELECTRIC UTILITY ASSETS, OUR GAS UTILITY SUBSIDIARIES ABOUT 10% OF THE NATION'S GAS UTILITY ASSETS AND OUR GAS PIPELINE SUBSIDIARIES TRANSPORT

ABOUT 20% OF THE NATION'S NATURAL GAS SUPPLIES. COLLECTIVELY, WE SERVE 18 MILLION CONSUMERS IN 29 STATES.

THE 1935 ACT IS UNLIKE OTHER STATUTES ADMINISTERED BY THE S.E.C. WHICH HAVE DISCLOSURE AS THEIR PRIMARY GOAL. THE 1935 ACT REQUIRES THAT THE S.E.C. LOOK AT THE SUBSTANCE OF THE TRANSACTION AND TAKE AFFIRMATIVE ACTION BEFORE REGISTERED HOLDING COMPANIES CAN ENGAGE IN VIRTUALLY ANY CORPORATE TRANSACTION, INCLUDING ROUTINE FINANCINGS. WHILE THE STAFF OF THE OFFICE OF PUBLIC UTILITY REGULATION HAS BEEN ABLE TO PROCESS ROUTINE MATTERS RELATIVELY QUICKLY (APPROXIMATELY 60 DAYS), WITH SUCH A LIMITED STAFF, EVEN ROUTINE MATTERS HAVE RECENTLY ENCOUNTERED DELAYS. FOR AN EXAMPLE, IN 1988, COLUMBIA PROPOSED A SIMPLE REVISION OF EXISTING FINANCING AGREEMENTS THAT WOULD HAVE REDUCED COSTS. UNFORTUNATELY, THE FILING WAS MADE IN THE SUMMER, THE ATTORNEY REVIEWING IT WENT ON VACATION AND THE NOTICE REQUIRED FOR THE ESSENTIALLY ROUTINE TRANSACTION WAS DELAYED THREE WEEKS. THE THREE-WEEK DELAY IN IMPLEMENTING THE NEW AGREEMENT COST THE

COMPANY ABOUT $200,000. RECENTLY, WE WERE TOLD THAT ISSUANCE OF ANOTHER NOTICE WAS DELAYED BECAUSE THE REVIEWING ATTORNEY HAD TO TAKE TIME TO WORK ON A PENDING RULEMAKING REQUEST. THESE MINOR DELAYS IN ROUTINE ITEMS MAY NOT HAVE DIRE CONSEQUENCES, BUT THEY DO HAVE COSTS.

NON-ROUTINE MATTERS ARE MORE IMPORTANT AND MORE SUBJECT TO DELAY. ANY TRANSACTION WHICH IS OPPOSED REGARDLESS OF THE REASON FOR, OR THE VALIDITY OF, THE OPPOSITION, OR WHICH RAISES A NOVEL ISSUE REQUIRES SUBSTANTIALLY MORE STAFF ATTENTION. ORDERS CONCERNING SUCH MATTERS GENERALLY MUST BE REFERRED TO THE COMMISSION. THEY, THEREFORE, TAKE MUCH LONGER TO PROCESS AND ARE SUBJECT TO MUCH LONGER DELAYS.

WHAT IS IMPORTANT IS TO STRESS THAT MANY CASES RELATE TO DIRE NECESSITY OR WINDOWS OF OPPORTUNITY AND THAT AUTHORIZATION IS REQUIRED ON A TIGHT SCHEDULE. IN THE PAST, WHEN ADEQUATELY STAFFED, THE COMMISSION HAS MET THESE CHALLENGES AND HAS

ALLEVIATED SERIOUS PROBLEMS. THAT UNFORTUNATELY CANNOT BE SAID ABOUT NOVEL OR CHALLENGED TRANSACTIONS FILED RECENTLY. OUR COMPETITORS -- EXEMPT ELECTRIC AND GAS UTILITIES AND INDEPENDENTS -- ARE NOT SUBJECT TO THE ACT AND THEREFORE TO NO SUCH REGULATORY CONSTRAINTS. IN MANY INSTANCES, THEY ARE ABLE TO SECURE IMPORTANT COMPETITIVE ADVANTAGES OR INDEED THEY MAY USE THE ACT TO BE FREED OF POTENTIAL COMPETITION.

THE GAS AND ELECTRIC INDUSTRIES ARE IN AN ERA OF CHANGE WHICH MAKES NOVEL ISSUES MORE FREQUENT AND THE POSSIBILITY OF OPPOSITION FOR COMPETITIVE PURPOSES MORE LIKELY

DURING 1987, THE COMMISSION ESTIMATED THAT 167 FINANCIAL TRANSACTIONS AND 1,325 REPORTS WERE REVIEWED BY A STAFF OF ONLY 13. TO PLACE THE BURDEN IN BETTER PERSPECTIVE, IT SHOULD BE NOTED THAT OF THE 13, AT FULL AUTHORIZED LEVELS, THERE ARE ONLY 5 ATTORNEYS WHO REVIEW THESE APPLICATIONS. THE STAFF INCLUDES SUPERVISORY PERSONNEL, CLERICAL HELP, FINANCIAL ANALYSTS AND ATTORNEYS ASSIGNED TO EXEMPT COMPANY MATTERS, BUT THE INITIAL

APPLICATION REVIEW IS HANDLED BY THESE FEW INDIVIDUALS. RECENTLY DUE TO A SICK LEAVE AND VACANCIES, THERE WERE ONLY THREE ATTORNEYS HANDLING THE WORKLOAD.

THE BURDEN TO BE CARRIED BY THESE FEW INDIVIDUALS IS INCREASING. THE BACKLOG OF CASES BEFORE THE OFFICE OF PUBLIC UTILITY REGULATION IS PROJECTED BY THE S.E.C. TO GROW 400% OVER THE YEARS 1988 TO 1990. EVEN IF THE S.E.C. HAD GOTTEN ITS FULL REQUEST FROM O.M.B., THE BACKLOG WOULD HAVE GROWN. WE UNDERSTAND THE O.M.B. BUDGET DECREASED THE S.E.C.'S BUDGET BELOW REQUESTED LEVELS.

I MIGHT NOTE THAT THE REGISTERED HOLDING COMPANIES WOULD SUPPORT SO-CALLED "SELF-FUNDING" OF THE SECURITIES AND EXCHANGE COMMISSION RECENTLY PROPOSED BY THE COMMISSION BECAUSE SELF-FUNDING WOULD INCREASE FUNDS AVAILABLE TO THE AGENCY INCLUDING THE O.P.U.R. I AM ADVISED, HOWEVER, THAT SUCH AN APPROACH, WOULD TAKE A VERY LONG TIME TO IMPLEMENT. SO, INSOFAR AS I AM AWARE, THE ONLY PRACTICAL METHOD OF PROVIDING ADEQUATE STAFFING OF 1935

ACT RESPONSIBILITIES WOULD BE THROUGH A TRADITIONAL APPROPRIATION.

_IF_ THEY CAN BE ASSURED THAT THE FUNDS WOULD BE USED FOR PROPER ADMINISTRATION OF THE HOLDING COMPANY ACT, THE REGISTERED COMPANIES WOULD AGREE TO PROVIDE THESE FUNDS TO THE TREASURY FOR APPROPRIATION IN THE TRADITIONAL PROCESS THROUGH INCREASED FEES. OVER 150 APPLICATION-DECLARATIONS ON FORM U-1 ARE FILED BY REGISTERED COMPANIES EACH YEAR. A SIMPLE INCREASE IN THE FEE FROM $2,000 TO $6,000 WOULD PROVIDE THE ADDITIONAL $600,000 BEING SOUGHT. HOWEVER, I UNDERSTAND THAT ABSENT SOME SORT OF NEW LEGISLATIVE FEE DETERMINATION, THE INDEPENDENT OFFICES APPROPRIATIONS ACT OF 1952 PERMITS A FEE TO BE ADOPTED BY AN AGENCY ONLY BY RULE BASED ON ACTUAL COSTS. WE HAVE NO IDEA WHAT IT COSTS THE S.E.C. TO PROCESS AN AVERAGE FORM U-1. FURTHERMORE, WITH AN AVAILABLE STAFF OF ONLY THREE OR FOUR ATTORNEYS IN THE O.P.U.R., ANY RULEMAKING EFFORT WOULD REQUIRE THAT THE NORMAL WORK BE DELAYED. IF THE ADDITIONAL FUNDS ARE AVAILABLE, THE MAN-

HOURS WILL BECOME AVAILABLE TO PROVIDE FOR THE RULEMAKING TO INCREASE FEES.

IN CONCLUSION, THE REGISTERED UTILITY HOLDING COMPANIES HAVE A VERY IMMEDIATE PROBLEM WITH UNDERSTAFFING DUE TO UNDERFUNDING OF THE O.P.U.R. AN ADDITIONAL ALLOCATION OF $600,000 TO THAT OFFICE FOR FISCAL YEAR 1990 AND BEYOND IS NECESSARY TO ASSURE PROPER ADMINISTRATION OF THE ACT.

I WOULD NOW BE PLEASED TO ANSWER ANY QUESTIONS WHICH YOU MAY HAVE.

PROPOSED REDUCTION IN 1989

Senator Hollings. Now, the President has just proposed $2,161,000,000 in supplemental appropriations, but in order to provide for them, he reduces the domestic discretionary programs, namely, the SEC, by 1.099 percent. In other words, he would be cutting you $1,567,000. Can you absorb that reduction? We were talking a second ago about $500,000. I don't see how you are going to absorb it, or can you?

Mr. Ruder. No, sir; we estimate that at this time in the year, as you know, we are moving toward the end of our fiscal year, we would be required to actually furlough people in order to accomplish that goal.

Senator Hollings. How many would you have to actually furlough?

Mr. Ruder. Furlough. We would have to take everybody and say, "You are going to have 3, 4, or 5 days off with no pay." That would be a dramatic injury to our program and, I think, would be just terrible for employee morale.

Senator Hollings. Don't even run that rumor around. Tell them we are not going to do it.

Mr. Ruder. We are not going to do it.

Senator Hollings. No, sir; because Senator Rudman and Senator Bumpers, I have just been looking around since January to find at least one budget that we could feel good about, and I feel good about this one. I think we can put more money in it, and you know, we got so many that are lagging and so many other real needs. If we can just leave you alone and give you some of the money you collect so you can continue on, it looks good to me.

I yield to you, sir.

ASSISTANCE PROVIDED TO JUSTICE DEPARTMENT

Senator **RUDMAN**. Thank you, Mr. Chairman. I have a couple of observations. First, I agree with the chairman totally. This is not a budget under the current situation that we are faced with to propose any reduction. I think we have to prioritize here.

This committee also funds the Justice Department budget, so we get involved with all of their requests. I think it is fair to state that the cases creating the major workload in Justice in white collar crime over the last 24 months or maybe even longer have come from SEC investigations.

Mr. **RUDER**. If I could just respond to that, we give the Justice Department a great deal of staff help, and we, indeed, sometimes detail people to their offices in order for them to be able to have the staff expertise. I think we have four people in the New York area?

Mr. **LYNCH**. We have 4 people who have been detailed to work up in New York, to work on the Drexel grand jury, and that is in addition to the 20 or more people that we had working on the civil investigation——

Mr. **RUDER**. Gary Lynch, for the record.

Mr. **LYNCH** [continuing]. And 20 or more people working on the civil investigation in Washington, and the information that we develop in the civil investigation is, of course, available to the grand jury up in New York.

Senator **RUDMAN**. The reason I raise the point is because, obviously, it is a system that we are talking about, a whole administration of justice system, and we have to look at the whole system. The fact is, Mr. Chairman, that one of the reasons we have the success that we have had on the Department of Justice level, the reason Mr. Giuliani could be as successful as he has been is because he has had the SEC essentially putting together the corroborative evidence through a variety of means.

So I agree with you totally, Mr. Chairman, that this is one budget where somebody was not thinking down at OMB when they simply ran across the board with this relatively small amount of money. It is a major amount to this agency, but even more important, if, in fact, we are going to restore confidence in the capital markets, then there has to be confidence that Mr. Ruder's agency is doing a good job with good people.

CIRCUIT BREAKER PROCEDURES

I have two more questions. First, the market circuit breaker procedures that were announced back in October 1988, how is that working, and do you think that it is adequate to prevent what happened?

Mr. **Ruder**. We not only have the 250 point decline on the Dow Jones industrial average as a circuit breaker, but we have had, I think, excellent voluntary cooperation between the New York Stock Exchange and the Chicago Merchantile Exchange. They have an interruption phase at about a 100-point decline on the Dow, and that point was reached or nearly reached the other day in the decline, and I am very glad that it was reached in the morning. One of the other portions of this agreement, which was effected the other day in the morning, was a delay in the opening on the Chicago Merchantile Exchange. I think those delays are very healthy.

Senator **Rudman**. The logic behind it is that to keep a free fall from occurring, you give people a chance to draw back, look, think, and not get panicked into the kind of trading that is almost automated now. Is that it?

Mr. **Ruder**. At the 250 point level, the theory is that we want to avert panic. At the 100 point level, the idea is to provide very small pauses in the market so that people have a chance to look and see what is happening.

SELF-FUNDING STUDY

Senator **Rudman**. The only other question I had, Mr. Chairman, is on the study of self-funding, which is something the Executive Director of the SEC issued at the request of the Senate Banking Committee. The possibility of financing the Commission through the generation of its own fees, obviously, in the last several years, would have been very beneficial for the agency.

I have a problem with self-funding generally, although there is nothing to say you might not have an exception to the rule. I wonder if either you or your Executive Director might like to address that. That study was done at the request of the Senate Banking Committee. I would just like to know why you think you are so different that maybe here is an area that we ought to self fund as opposed to, say, maybe, DEA or some other agency.

Mr. **Ruder**. I have two answers to that. The self-funding study really has two pieces in it. The first piece involves an evaluation of our pay scales compared to the pay scales of the industry which we regulate. There, the numbers are so dramatically different that we believe we should be relieved of some of the OPM guidelines for pay scales so that we can compete adequately against the securities industry and the law firms for financial examiners, for accountants, and for attorneys.

I think there is very little disagreement about that at our agency and indeed, practically with anybody to whom I have talked.

With regard to the self-funding aspect itself, that portion was an effort to show the relationship between what we bring in and what we spend, and I think, at least from my point of view, the analysis was designed to show what our needs are and to give illustrations of ways in which they could be accomplished.

The Executive Director offered either increases through the regular appropriation process or placing us to the side with complete appropriation and authorization oversight for putting us on to self-funding.

I guess as a lawyer, I would think that we gave the total self-fund funding idea, put it in there as a means of saying, "Well, this would be the ideal way," but we would really be satisfied if we could have an appropriations process every year that would produce the kind of budget that we need.

Senator **Rudman**. I think it was a good study and made some good points. It got everybody's attention. There are always problems with this sort of thing because it is kind of analagous to the small town in which the police department is funded by speeding tickets. There is always some suspicion as to whether or not the ticket should have been given.

I would not say that anybody as professional as the SEC would do a thing like that——

Mr. **Ruder**. No; we do not advocate the use of our enforcement revenues, but let me make one other point. I characterized us as an enforcement agency, but I would also characterize us as a financial regulator. As the markets are changing, both in the United States and internationally, we have become much more involved with the banking regulators and with international regulators. As you know, the banking regulators in this country are more free from salary restrictions and other budget constraints than we are.

So that I think in that sense, in terms of competing for salaries, we are much more like a financial regulator and deserve that consideration.

INTERNATIONAL REGULATION

Senator **Rudman**. Mr. Chairman, one last question. You have just set off a memory here. Maybe we will make some headlines in Tokyo tomorrow from this hearing. There was a very interesting article written several months ago about what some of the Japanese companies are doing in terms of borrowing money. My understanding is that the price earning ratios of stocks on the Tokyo exchange are just incredible compared to our own. Some of them are selling for hundreds, in fact, thousands of times their earnings in some cases.

My understanding is there is strong evidence that some of these companies have pledged that stock, which has just incredible overvalue compared to any traditional American standards, as collateral for loans in American banks. The money is then taken to acquire American assets. Is that something the SEC would get involved in, or would that be something that the Federal Reserve and the regulators would get involved in as to assessing what proper collateral would be in terms of its value?

Mr. **Ruder**. I am not familiar with the circumstances you suggest, but the question of whether a bank loan in the United States from a U.S. bank to any of its customers is adequately collateralized is a matter for Federal Reserve.

Senator **Rudman**. The SEC would not get involved?

Mr. **Ruder**. Well, we might be involved in the disclosure area. We would very much want to know whether the bank holding company's disclosure adequately described the collateral which was available, and if it did not, then we would be very concerned.

Senator RUDMAN. Because obviously, if you have a stock selling for $1,000 and it was earning $1 a share, it is rather unusual. Yet, I understand that is not unusual in some of these foreign markets for some of that stock to be used as collateral for loans from U.S. banks, the money then being taken right in this country—our own money, if you will—to purchase U.S. assets.

Mr. RUDER. We would be concerned about those price earning ratios in terms of the market strength of the Japanese stock market, but we would get at it not from the question of whether those ratios were right, but what are the disclosures of risk by the bank?

Senator RUDMAN. Thank you very much. Thank you, Mr. Chairman.

Senator HOLLINGS. Senator Bumpers?

BOUNTY HUNTER PROVISIONS

Senator BUMPERS. Thank you, Mr. Chairman.

Dave, your appearance here today is really propitious for me, because this afternoon at 2:30, we are going to take up Senator Metzenbaum's so-called whistleblower bill. It deals with the encouragement of people to blow the whistle under any Government contract worth more than $1 million. I think defense procurement fraud prompted it. But there is a provision in there, Section 2, which I intend to move to strike, and it is the so-called bounty hunter provision.

I am offended by that, and we have done this before. There is precedent, and that is going to be the argument this afternoon against my motion to strike. But I am increasingly concerned about this sort of KGB attitude we are developing in this country about encouraging people to level charges. Usually it is a disgruntled employee.

When I was Governor, every time somebody got fired, they wanted to see the Governor, and they would all come into me about the hanky-panky that was going on in their office, all the fraud and so on, but they never found an excuse to talk about it until they lost their job.

The IRS does this. I grew up in a small town where everybody knew everybody else's business, and every time the IRS audited somebody, everybody knew it and everybody started speculating about who turned them in. [Laughter.]

Senator RUDMAN. That was quite a town.

Senator HOLLINGS. I don't know how you got elected. [Laughter.]

Senator BUMPERS. Of the 1,500 people in the town, there were always 3 or 4 guys that the attention focused on as to which one turned this guy in. Every time somebody bought a Mercedes—Well, there weren't any Mercedes in my home town, but any time anybody bought a new car or built a new home, everybody suspected he was cheating on his taxes.

I didn't know it until I stopped in the coffee shop one morning. I had been practicing law for a long time. And somebody told me there is a fee for this. That you can get up to 10 percent of whatever the recovery is.

That is not quite as bad as the Metzenbaum provision or this insider trading provision that we put in last October, because that doesn't depend on a conviction.

So you testified over in the House last summer on this so-called Insider Trading Sanctions Act. Here is the provision in that bill.

> Notwithstanding the provisions of subsection d(1) there should be paid from amounts imposed as a penalty under this section and recovered by the Commission or the Attorney General, such sums, not to exceed 10 percent of such amounts, as the Commission deems appropriate, to the person or persons who provide information leading to the imposition of such penalty. Any determinations under this subsection including whether, to whom, or in what amount to make payments, shall be in the sole discretion of the Commission, et cetera.

Without going any further, it says "any determination shall be final and not subject to judicial review."

There again, there is a certain arbitrariness about that. The Commission will decide. Under the Metzenbaum bill this afternoon, the Attorney General will decide. The Attorney General, for example, if there is a fraud down in the Pentagon and he thinks it is going to embarrass the Republican administration or whoever happens to be in the White House, he probably wouldn't deem it appropriate to provide that.

Last week, you probably saw in the Wall Street Journal, a fellow that worked for the Singer Corp. He worked for Singer and then he went out and worked for the Department of Defense, and he had thought Singer was defrauding the Government when he worked. Apparently, he knew they were defrauding them. He knew they were keeping two sets of books. After he went to work for DOD, he suddenly realized he could make $50 million by turning Singer in. He said in this Wall Street Journal story, "I wouldn't have done it, but I saw a chance to make myself $50 million."

I am just offended by that. I have got your comments here today from your testimony. You said that:

> Personally speaking, I have always been troubled by the bounty concept, and I had hoped that within the industry, we would encourage people to come forward and tell what's wrong with that industry based upon the ethical and moral principles which exist in that industry. We should not be in the position of having to pay them for doing what they should be doing anyway. I'm not speaking for the Commission, but for myself. I think in an industry which has high standards that it may be an anomaly to think that we would then have to pay people for doing what they ought to do.

Now, these people who get teary-eyed singing the National Anthem and saying the Pledge of Allegiance and who don't go vote or who want to turn their neighbors in, that is the way the KGB operates; that is the way Hitler operated, and I am telling you, we have gotten to where we are just moving further and further down the line, and I am going to try to bring a halt to it.

My question is: Do you have any comments in addition to what you said here in this testimony?

INSIDER TRADING AND SECURITIES FRAUD ENFORCEMENT ACT

Mr. **Ruder**. Well, I have to explain to you, sir, that when the insider trading bill was passed last summer I was asked whether I favored the bill, and I did indicate that I favored the bill.

But I was not asked specifically whether I favored that portion of the bill, and if I had been asked that, I would have reaffirmed my testimony earlier in the year in which I said I thought the bounty provision was not a good provision.

I have had some long experience with what we call an honor code, at Wisconsin University where I got my law degree, and personally, although I thought the honor code was a good idea, I found the idea that there should be a squeal provision incorporated into that honor code to be something that was very troubling. I don't really believe that we ought to have a society in which we reward people for telling on their neighbors.

I must say, I think there are ethical standards which would cause an individual to reveal crime if he knows about it, but I think being paid for it is not the right way.

Senator **Bumpers**. I want you to know, I appreciate your comments very much. Those are my feelings precisely. I just think this country is moving too much that way. We ought to be teaching patriotism and citizenship without grounding rewards for it. You also pointed out two things.

No. 1, you have to stop and investigate every allegation, no matter how specious it may be; I know the bureaucratic political mentality. Fritz Hollings and Warren Rudman and Bob Kasten and I do stupid things all the time to avoid the appearance of impropriety, because it is not worth one story in the newspapers.

So you would have to stop, use the resources to the very limit, which is what you are testifying about, investigate every kind of a crazy allegation from every disgruntled employee, so you are going to be using up resources that way. No. 2, if you do wind up in court, I was a trial lawyer as you know, and I would just love to get one of those guys on cross examination. [Laughter.]

I promise you, I can spring my client almost every time when I have got a stoolie sitting on the stand.

I feel very strongly about it, Mr. Chairman. I hope you will join me this afternoon.

Senator **Hollings**. I am against stoolies. [Laughter.]

Senator **Bumpers**. One last question.

Senator **Hollings**. Yes.

Senator **Bumpers**. Incidentally, Dave, my daughter was admitted to Northwestern yesterday.

Senator **Hollings**. You went to Northwestern Law School.

Mr. **Ruder**. I was dean.

Senator **Bumpers**. He was much older.

Senator **Hollings**. You must have passed.

Mr. **Ruder**. I gave him passing grades.

Senator **Bumpers**. He was dean when I was there. You can see he was a lot older than I was. [Laughter.]

PUBLIC UTILITY HOLDING COMPANY USER FEES

But the other thing is, the utility companies are making an interesting proposal on user fees, and they are asking that we go up by $2,000 from $4,000 to $6,000 per application based on the fact that you don't have the resources to process those applications as quickly as you would like, as they would like. How do you feel about that proposal?

Mr. **Ruder**. I have to say, I do need the money. I will accept it, sir, and use it for the purpose for which it is appropriated.

Senator **Bumpers**. Are they right? Could you get that work done a lot faster if you had that fee in place?

Mr. **Ruder**. Oh, yes; the problem has been that there has been this indication that the Public Utility Holding Company Act will be repealed and in expectation of that repeal we cut our staff back. Now, instead of having it repealed, it is becoming much more complicated to administer, so we really do need the funds, and I think it would be beneficial to us to have specially allocated funds to be able to administer the act.

Senator **Bumpers**. Do we need to do that legislatively? We are not the authorizing committee that would permit that, but do we have to do that legislatively? You can't raise that fee administratively?

Mr. **Ruder**. I don't think we can.

Ms. **McGrath**. We can't raise the fee without legislative help.

Senator **Hollings**. The chairman testified that $500,000 more was needed, right?

Mr. **Ruder**. Yes; but there must be legislation to authorize the increase in the fees. It is not within the level of fees that we can raise.

Senator **Hollings**. But we can still appropriate that $500,000.

Senator **Bumpers**. We would also have to raise his authorized personnel level.

Senator **Rudman**. Mr. Chairman, if you will yield for just a moment for a question. What we will have to do, as we have done in the past, we are going to have to do that in this committee, even though we are not the authorizing committee, in order to get the proper offset in our budget allocation. We are going to have to do it like we did a few years ago with regard to the immigration fees.

Senator **Bumpers**. Mr. Chairman, I came here because Dean Ruder and I have been very good friends for many years. He is an outstanding man. He ain't enough Republican to hurt. [Laughter.]

Senator **Hollings**. And he is enough Republican to stay on. I want you to know I want you to stay on. Have you gotten any indication?

Mr. **Ruder**. Things are still in limbo, sir.

Senator **Bumpers**. Thank you very much.

Senator **Hollings**. Thank you.

Senator Kasten.

Senator **Kasten**. Mr. Chairman, I have no questions. I just want to thank and congratulate David for the outstanding job he has been doing. I understand some of the questions that I might have asked have already been covered. Thank you very much for everything you are doing.

Mr. **Ruder**. Senator Kasten can claim me as having my birthplace in Wisconsin, sir. I would like my loyalty to be here.

COMPARABLE SALARIES

Senator **Hollings**. Let me ask a comparative between the financial banking world, let's say the Federal Reserve salaries and SEC salaries. Are they comparable? You were talking about being able to pay. You have asked for a waiver from the Office of Personnel Management.

Mr. **Ruder**. The Federal Deposit Insurance Corporation, I can't quantify this, but the Federal Deposit Insurance Corporation has been paid salaries at higher levels than we were paid for many, many years, and I understand that Chairman Greenspan has recently decided to exercise the authority which he has to increase salaries at the Federal Reserve Board.

Senator **Hollings**. Can you have staff look into that and give me a little comparison so I will know?

Mr. **Ruder**. Yes; I can.

[The information follows:]

Comparable Salaries

The Federal Reserve study to determine market based salaries is nearing completion but has not been released.

The Federal Deposit Insurance Corporation [FDIC] uses the Office of Personnel Management GS/GM pay scale. However, that scale is adjusted by region for the cost of living. The cost of living is reviewed each year and modified periodically. In the Washington, DC, area, the current adjustment is 9.5 percent.

FOREIGN REGISTRATION REQUIREMENTS

Senator **Hollings**. Then one educational question at least for me and maybe for Senator Kasten. Before our Commerce Committee, we have, I think it is the Bryan or Hughes amendment to require the same registration information of a foreign entity, namely, a privately held company as it is required for a domestic privately held or a publicly held company. Are you familiar with that amendment at all, where the argument has been that the foreign corporations come over and they don't have to file?

We require a greater deal of filing for ours and less than ours is required overseas. Are you familiar with that amendment at all? It passed the House and came before the Senate. It was voted down on a threat of veto.

Mr. **Ruder**. I am not familiar with it in detail, no, sir, but I can tell you that it is a very difficult problem. We have a special rule which allows certain foreign corporations to use their home country disclosure documents and have securities traded in our market within limits, and that does make our domestic companies unhappy.

Senator **Hollings**. There is an inequity.

Mr. **Ruder**. There seems to be an inequity. Yet, I am very loath to urge change here, because if we don't allow those companies to trade in our markets, then our investors are not going to be able to take advantage of the opportunities to buy securities of those companies unless they go overseas, and if they go overseas, that means that our capital markets are not going to have those transactions in the United States.

It is a very difficult question in terms of not forcing activities overseas which could exist in the United States.

Senator **Hollings**. I understand that. What I am trying, I guess, to get at is the differential in the actual information which we obtain from a domestic corporation as compared to the foreign, and when the foreign comes in, my understanding is we are not requiring that information whatever. We know nothing about some of these companies, or particularly, I guess you wouldn't have a privately held company in this country, so the comparable would not be there, or differential, but at least we ought to be knowing more about the companies that are coming in and who is holding what and what influences and what-have-you.

You have no feel about that at all?

DISCLOSURE REQUIREMENTS FOR FOREIGN COMPANIES

Mr. **Ruder**. I would like to actually have the Director of our Division of Corporation Finance give you an indication of the difference in the disclosure requirements for foreign companies as opposed to domestic companies. Would you do that, Ms. Quinn?

This is Linda Quinn.

Ms. **Quinn**. With respect to registration where they are offering securities in the United States, we have a special set of requirements which have some modification for foreign issuers, but in large part, are quite similar. The financial statements have to be reconciled to U.S. standards, and so thus with respect to the offering of securities over here, while there is a difference, I would suggest it is not a major difference.

Foreign issuers do not have to file quarterly interim reports as our domestic issuers do. The rule that the Chairman was speaking to is for those foreign issuers' securities that are held here and not traded in the public market. They are not traded on an exchange and they are not traded in NASDAQ, that is, companies who may not have voluntarily come to the United States but whose securities have been bought by U.S. investors and are now held here. Such companies are not compelled to comply with our disclosure requirements because they have not taken the voluntary step of entering the public market.

I am not certain, but it may be that the legislation you are referring to is focusing on those companies who are coming here to invest in U.S. securities and it may be a 13(d) orientation, although I am not familiar with the legislation. There, a foreign person who owns more than 5 percent of a class of stock would be subject to the 13(d) requirements that are applicable to our domestic investors. So, we wouldn't see a difference between what they have to provide and what our U.S. investors have to provide. I am not familiar with the legislation.

Senator **Hollings**. Well, I will confer further. I appreciate it very much.

Senator **Rudman**. I am all set.

BOUNTY PROVISIONS

Senator **Bumpers**. One final question. In the *Boesky* and the *Milken* cases, did the SEC develop those cases or was there a whistleblower who came to you?

Senator **Hollings**. A stoolie? Did a stoolie develop it? [Laughter.]

Mr. **Ruder**. No; the Levine investigation, which pre-dated the Boesky investigation, came from a letter which came to Merrill Lynch, and Merrill Lynch then gave us the letter, and our staff then followed that letter through and engaged in the investigation itself. It was not, at that point, it was not a stoolie provision.

I must say that Bank Leu in the Bahammas told us about Levine, and Levine told us about Boesky, and Boesky told us about Drexel, so there is that kind of information going on, but that is not——

Senator BUMPERS. None of those people are entitled to a fee, either, because that provision wasn't in effect then.

Mr. RUDER. They wouldn't get a fee from us. [Laughter.]

Senator BUMPERS. I don't know. Is there a provision in the Insider Trading Act saying a participant is not eligible?

Mr. RUDER. Only in our discretion, and I can assure you that a participant would not have any chance.

Senator BUMPERS. There is no absolute bar to them getting a fee. It is in your discretion, even though they are wrongdoers.

Mr. RUDER. That is right. There is no bar.

Senator BUMPERS. I will say this for Metzenbaum's bill. He has a provision in there that a participant in the crime is not eligible for a fee.

Mr. RUDER. It is going to create very difficult litigation problems for anybody who wants to resist that, and the other question, Senator, that bothers me about it is that the veracity of the witness who turns over, who gives you the information, is immediately suspect because of the fact that——

Senator BUMPERS. If he is there as a good citizen, you will get a conviction. If he is there because he is going to get a big fee, a guilty person is probably going to go free.

Senator HOLLINGS. That was the feeling with the U.S. attorney. If I am Boesky and I rat on the next fellow, then I get a lesser term? Is that involved in this case?

Mr. RUDER. I would rather not speak about the particular case, but in some cases, a person who is cooperative receives a lesser penalty than he would otherwise receive, and I think that is good law enforcement.

Senator RUDMAN. Mr. Chairman, any prosecutor can tell you, as I can tell you, that given a choice, you always will go with an unpaid informant rather than with a paid informant. The prosecution problems are immense when you put in a paid informant, particularly my own recollection in drug cases as a prosecutor. You put a paid informant on and people like Bumpers have a field day.

Senator HOLLINGS. There you go.

CORRESPONDENCE FROM INVESTMENT COMPANY INSTITUTE

[CLERK'S NOTE.—The subcommittee has received the following letter from the Investment Company Institute. By direction of the chairman, the letter has been printed in the record.]

LETTER FROM DAVID SILVER, PRESIDENT, INVESTMENT COMPANY INSTITUTE

April 24, 1989

The Honorable Ernest F. Hollings
Chairman
Subcommittee on Commerce, Justice and
State, the Judiciary, and Related Agencies
S-146A Capitol Building
Washington, D.C. 20510

Dear Mr. Chairman:

I am writing on behalf of the Investment Company Institute to express our belief that the level of funding for the Securities and Exchange Commission is inadequate and should be substantially increased.

We are concerned that unprecedented and growing complexities of the securities markets, when combined with the pressures of national budgetary considerations, may threaten the SEC's ability to pursue vigorously -- as it has with distinction for the past fifty-five years -- its fundamental statutory mandate to act in "the public interest" for the "protection of investors." While the mission and apparent scope of the SEC's responsibilities have remained essentially constant over the years, the problems it faces domestically and internationally, and the sheer volume of activity within its regulatory ambit, pose vast new challenges.

The Committee has before it statistical data as to the substantial increase in the Commission's workload in recent years, which make a compelling case for substantial budget increases. I thought it might be helpful to take an even longer overview -- 25 years -- which suggests that there may have been an even greater erosion of the SEC's capabilities than is suggested by short-term comparisons.

The starting point is the SEC's human resources. In 1963, the SEC was authorized to have 1,481 employees. I understand that under current budgetary constraints the Commission may be limited to 2,050 in the coming year. This would represent a 38 percent increase in staff over the past quarter century. But a comparative review of SEC supervised activities as between 1963 and 1988 raises serious doubts as to whether the SEC has the human resources to discharge effectively its responsibilities.

In 1963, the average daily volume of trading on the New York Stock Exchange was 4,566,000 million shares per day; in 1988 trading volume equalled 164,460,000 million shares per day -- an increase of 3502 percent.

In 1963 there were 5,482 registered broker-dealers and 679 applications for new registrations; in 1988 there were 12,140 registered broker-dealers and 2,204 new applications -- an increase of 121 percent in registrations and 225 percent in applications.

In 1963 there were 1,564 registered investment advisers and 285 new applications; in 1988 there were 14,120 registered investment advisers and 3,360 new applications -- an increase of 803 percent in registrations and 1079 percent in applications.

In 1963 there were 727 registered investment companies with 48 new registrants; in 1988 there were 3,500 registered investment companies and 1,569 new registrations -- an increase of 381 percent in registered companies and 3169 percent in new registrations.

In 1963 the first major insider trading case -- Texas Gulf Sulphur -- was still in the future; in 1988 the "big" case is almost routine. In 1963 internationalization posed no enforcement problems. Today a growing number of securities frauds have an international aspect.

In 1963 there was no separate enforcement division at the SEC; what existed was a small office of a few dozen employees located within the predecessor of today's Division of Market Regulation. Today the Division of Enforcement is a major arm of the SEC employing 749 people.

In 1963 user fees collected by the U.S. Treasury under the securities laws accounted for only 19 percent of the SEC's budget; in 1988 such fees accounted for 184 percent of the SEC's budget.

The tremendous increases in the number of broker-dealers, investment companies, investment advisers, and trading volume are typical of the securities markets as a whole. This growth has created enormous quantitative differences and important qualitative changes in the kind of regulatory oversight and enforcement activities required of the SEC.

For example, increased public participation in the markets and revolutionary developments in communications technology have served to create an environment conducive to the perpetration of widescale fraud on a nationwide basis -- as in the current "penny stock" phenomenon -- which, in the absence of an enforcement capability with a swift response time, can harm many thousands of small investors before being stopped. At the same time, new, complex financing and trading techniques and internationalization have given rise to "big" cases which consume tremendous enforcement energies. Some cases may simply not be pursued because of insufficient resources.

Additionally, competitive developments and innovation within the securities industry, over time, creates the need for new and different regulation -- regulation which protects the public but also affords industry the flexibility necessary to foster healthy innovation and robust competition both nationally and internationally. An understaffed agency is much more likely to miss the mark in one direction or the other -- and either overregulate or underregulate.

Thus, whether one takes a short or long view, it is clear that the SEC is underfunded and understaffed. The greatest irony is found by comparing user fees collected by the U.S. Treasury under the securities laws: In 1963 these user fees represented a small fraction of the total SEC budget; currently user fees are approaching twice the size of the current budget. Clearly, 1963 investor protection activities conducted by the SEC were considered to be critical enough to warrant the expenditure of general revenues to subsidize these activities. Now, investors and industry are being required to pay far more than the SEC receives in appropriated funds. The investing public and the industry are thus not receiving the services from government which they need, and, as these figures show, they are not receiving the services for which they pay. This should be rectified.

Thank you for the opportunity to present our views. We would be most happy to provide you with such other information which you might find helpful.

Sincerely yours,

David Silver

David Silver

ADDITIONAL COMMITTEE QUESTIONS

Senator HOLLINGS. If there is nothing further, we will be submitting some additional questions for your response for the record.

[The following questions were not asked at the hearing, but were submitted to the Commission for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

MARKET REGULATION

QUESTION:

Mr. Ruder, in your statement you say that the "October 1987 market break dramatically emphasized the Commission's role in the regulation of financial markets." Please give us a brief summary of what the SEC has done over the last 18 months in response to the market break.

ANSWER:

The SEC has undertaken a number of important initiatives in response to the October 1987 market break. One of the initial actions taken by the SEC was the preparation of a comprehensive study of the causes, effects, and regulatory ramifications of the market break. The study was conducted by the Division of Market Regulation to provide the Commission with a factual basis to determine the appropriate regulatory responses to the October 1987 market break. The study examined the entire range of market reactions from specialist performance to the role of derivative markets and the operation of clearance and settlement systems.

In this connection, the SEC has recommended numerous legislative market reforms in the course of testimony before various Congressional committees and subcommittees and as an active participant in the President's Working Group on Financial Markets. In addition, the SEC has formulated and transmitted to Congress a number of legislative proposals designed to improve market oversight and performance. The legislation addresses such issues as emergency Commission authority over securities trading; reporting of large securities positions and of the activities of holding company systems; and coordination of clearance and settlement, among other matters.

The SEC, and the securities exchanges, have also implemented a number of administrative market reforms, including many of those recommended by the SEC in its study and subsequent Congressional testimony. For example, the equity and options exchanges, in conjunction with the futures exchanges, have implemented detailed circuit breaker provisions to halt trading and provide priority market access to individual investors during periods of market volatility. In addition, the SEC has approved margin increases applicable to short positions in equity and index options and has approved a proposal to permit cross-margining of options and futures. The SEC also has overseen implementation of exchange reporting requirements regarding program trading activity and efforts to enhance the systems capacities of the exchange and NASDAQ markets. Last, the SEC has approved enhanced capital requirements applicable to certain exchange specialists and is considering a number of additional changes to equity and option specialist net capital requirements and to the overall minimum capital requirements for broker-dealers.

QUESTION:

Mr. Ruder, how do you feel about the market today? Would you encourage individual investors to return to the stock market?

ANSWER:

Overall, the U.S. securities markets are a much safer place for individual investors than they were during and in the immediate wake of the October 1987 market break. This is due primarily to the significant decrease in market volatility. In addition, since the market break the exchanges have implemented a number of systems enhancements that should help the exchanges better cope with future periods of market stress. These enhancements include increased stock and options exchange volume capacities, as well as procedures designed to provide priority market access to individual investors during periods of market stress.

I would encourage individual investors to return to the market, but with one caveat. Although day-to-day volatility is down, the markets still are subject to periodic, short spells of relatively acute intraday volatility. Accordingly, individuals interested in long-term investment are much less likely to be affected by market fluctuations than those interested only in relatively short-term gain.

QUESTION:

A recent article in the New York Times, "S.E.C. Proposing Less Disclosure," (1/24/89), was critical of proposed rule 144A, which would expand the market for private placements not subject to SEC disclosure rules. How does this change expand consumer confidence in the market?

ANSWER:

Proposed Rule 144A is intended to define a class of resales of securities by persons other than the issuer that, as a per se matter, do not involve a public offering and therefore do not create registration obligations. While institutional resales currently take place without registration, Rule 144A attempts to address legal and practical uncertainties concerning this industry practice.

Since the passage of the Securities Act in 1933, issuers have raised capital in transactions that, as permitted by Section 4(2) of that statute, take place without registration and, thus, without specific mandated disclosure requirements. Rule 144A does not change Section 4(2); rather, it clarifies the legal analysis that applies to resale transactions that take place after an issuer first offers and sells its securities.

Adoption of Rule 144A will also not alter the continuous reporting obligations imposed on publicly-owned companies by the Securities Exchange Act of 1934. That statute requires publicly-owned companies to file periodic reports with the Commission that provide all information about the issuer that must be included in a registration statement filed in connection with a public offering of securities. Under the Commission's integrated disclosure system, Exchange Act periodic reports may be incorporated by reference into registration statements and are the principal source of information about the issuer of securities. The Commission has no reason to believe that Rule 144A will affect the level or quality of disclosure provided to the markets by publicly-owned companies.

In summary, by providing a framework in which qualifying institutional resales can be freely made, Rule 144A should increase the efficiency and liquidity of the private placement market. This, in turn, could attract an increasing number of issuers to the U.S. private placement market by lowering the costs traditionally imposed on both issuers and investors in private placements. A broader, more efficient, and better defined marketplace should promote investor confidence and expand investment opportunities.

QUESTION:

The Budget for Market Regulation includes an additional 27 positions. How many of the increase will be used to establish the capital markets unit?

ANSWER:

Five staff years will be used to create the new capital markets unit. This unit will evaluate the internal controls regarding inventory risks and operation of automated systems of broker-dealers and their unregulated affiliates. This unit will obtain the information necessary for the Commission to carry out its responsibilities as a financial regulator. The October 1987 market break dramatically demonstrated the linkages between the U.S. markets and the other global trading markets. The broad scope of the proprietary trading of broker-dealers and their unregulated affiliates has made their financial viability a central concern in the global banking and monetary system. Other nations, as well as the other financial regulators in this country, look to the Commission to be knowledgeable about the businesses of the major broker-dealers it regulates and to enforce compliance with the federal securities laws.

In addition to carrying out its own risk assessments, this unit will coordinate and provide leadership for broker-dealer examiners, particularly those located in the New

York Regional Office and at the New York Stock Exchange, who have responsibility for examination of the nation's largest securities firms. Expansion of this unit in the future is expected.

QUESTION:

In October 1988, the Commission established a Task Force to protect investors from fraud in the sale of "penny stocks." Are sufficient resources available to combat penny stock fraud?

ANSWER:

Combating penny stock fraud is a major priority of the Commission. In 1988, the Commission initiated more than 25 enforcement actions involving fraud or abuse in the penny stock market. Since 1986, one regional office alone has initiated more than 30 cases involving penny stock abuse. In addition, in 1989, the Commission suspended over-the-counter trading in well over 100 penny stocks.

The Commission's broker-dealer examination program has uncovered strong evidence that misconduct in penny stocks is continuing. In the summer of 1988, the staff conducted a special series of examinations of penny stock broker-dealers. Of the 17 examinations initially done, 14 resulted in enforcement referrals. Possible violations uncovered included abusive distribution and trading of blank check offerings; excessive, undisclosed markups; parking securities in nominee accounts; failure to supervise securities salespersons; and selling by unregistered salespersons.

The Penny Stock Task Force also includes representatives of each of the Commission's operating divisions and regional offices. Its purpose is to identify the problems posed by penny stock manipulation, to consider regulatory solutions to these problems, and to educate investors on the dangers of ongoing stock fraud. The Task Force also seeks to improve coordination with other law enforcement agencies.

To deal with this major, nationwide problem, increased resources may be needed in future years.

DREXEL BURNHAM LAMBERT MATTER

Last week, Michael Milken of the Drexel Burnham Lambert Inc. was indicted on 98 counts of fraud, racketeering, insider trading, and manipulation of stock prices by a federal grand jury in New York. In addition, the SEC in September 1988 filed a 184-page civil complaint against Milken and Drexel. In December, the U.S. Attorney in New York announced a plea bargain in which Drexel admitted that Milken had engaged in fraudulent schemes but that plea bargain has not yet been finalized in court.

QUESTION:

Please summarize the SEC efforts in this matter.

ANSWER:

The Commission commenced an intensive investigation of this matter beginning in about September, 1986 and continuing to the present date. As you have noted, this matter led to the initiation of a civil action against Drexel Burnham Lambert Incorporated and seven other defendants in September, 1988. This matter is the most time-consuming investigation conducted by the Commission. Through March 14, 1989, the Commission had expended in excess of 75,000 staff hours in this matter representing over 35 staff years of effort. While information on travel expenses and litigation costs is not readily available, they have been extensive. Thus, for example, the Division of Enforcement has hired three extra paraprofessional support personnel simply to assist in the litigation of this matter and maintain the huge quantity of documents which have been accumulated. The litigation will also require the retention of a professional copying and microfilm firm to copy the millions of pages of documents and the acquisition of sophisticated personal computers to manage data.

In addition to making the fruits of this extensive investigation available to the U.S. Attorney's Office for the Southern District of New York, which is handling the criminal indictment, the Commission has detailed four attorneys and two investigators on a full time basis to the U.S. Attorney's Office to assist in the Drexel, Milken, and related cases. Indeed, these personnel form nearly half of the prosecution team.

On April 13, 1989, the Commission announced that it had reached an agreement with Drexel resolving the Commission's action against that firm. The settlement calls for Drexel to consent to a wide ranging permanent injunction, to restructure the operations of its business, to appoint personnel acceptable to the Commission to a variety of key positions, to cooperate with the Commission's ongoing investigation, to cooperate in a wide-ranging review of Drexel's compliance operations, to finance a review of Drexel's trading activities by an accounting firm of the Commission's choosing and at the Commission's direction, and to cooperate with measures to be taken by the Commission to monitor the operations of Drexel's High Yield Bond and Capital Markets Services Departments, among others, over the next three years. The settlement also establishes a structure for distributing $350 million to injured persons.

Although the settlement resolves the Commission's case against Drexel, it does not reduce the burdens that this matter imposes on the Commission. The Commission's litigation against Michael Milken, Lowell Milken, Victor

Posner and other defendants is continuing. In addition, the Commission is pursuing a series of urgent and time consuming investigations into other misconduct by Drexel employees and others as well as the possible failure of managers and others to adequately supervise employees with a view to preventing violations of the securities laws. In addition, the Commission staff will be heavily engaged in monitoring Drexel's High Yield and other relevant departments in order to detect possible future violations of the law.

QUESTION:

How much has the SEC invested in manpower and funds to the investigation?

ANSWER:

Since the beginning of the Drexel case, the SEC estimates that it has devoted approximately 35 staff years for an estimated cost of $1,712,000 in salaries and benefits and a cost of $930,000 in other overhead expenses for a total estimate of $2,642,000. We anticipate that the future investment will be even greater.

QUESTION:

Please explain the racketeering element in the indictment.

ANSWER:

The indictment alleges that Michael Milken, Lowell Milken, Bruce Newberg and other unnamed co-conspirators engaged in a racketeering conspiracy through Drexel's High Yield Bond Department to enrich themselves through unlawful securities transactions, through related corporate finance and merger and acquisition transactions and through the influence and control over the financial markets they derived from their unlawfully achieved power. The indictment alleges that Drexel and its parent company, Drexel Burnham Lambert Group Inc., was a racketeering enterprise which achieved its unlawful purposes through a pattern of acts which included mail fraud, wire fraud and fraud in the sale of securities. The means and methods of the conspiracy were alleged to include insider trading, false filings regarding the true ownership of securities, manipulations of the price of securities, falsification of official books and records, the maintenance of secret records of unlawful activities, and unlawful assistance to the co-conspirators. Michael Milken is alleged to have been the leader of the conspiracy. Lowell Milken was alleged to have been Michael Milken's chief adviser who also assisted in resolving disputes involving co-conspirators and Bruce Newberg is alleged to have managed Drexel's unlawful arrangement with Princeton/Newport Partners and to have directed unlawful trades with that firm.

The indictment alleges three principal unlawful arrangements. The first was an arrangement with Ivan F. Boesky and his affiliated companies in which Boesky agreed to secretly buy and sell securities at the direction of Milken in return for assistance in raising financing and a share of the profits from the illegal enterprise. The second was an arrangement with Princeton/Newport Partners in which Princeton/Newport took secret securities positions for Drexel's benefit for the purpose of manipulating the price of securities while Drexel, in turn, assisted Princeton/Newport in generating bogus tax losses through pre-arranged securities transactions. The third arrangement was the use of material nonpublic information misappropriated by the defendants from Drexel clients to purchase securities through Drexel's proprietary accounts.

QUESTION:

Are the news accounts of the pleas bargain correct that it includes an admission by Drexel that Milken had engaged in two separate fraud schemes? If so, are those crocodile tears that Drexel shed last week about Milken now having a chance to clear his name?

ANSWER:

Drexel has stated publicly that it cannot contest the six counts of violation alleged in the information filed by the United States Attorney on January 29, 1989. The information alleges that the unlawful arrangement between Drexel and Ivan F. Boesky and his affiliated companies was conducted through a senior employee of Drexel's High Yield Bond Department and others. The subsequent indictment of Michael Milken and others makes it clear that the senior employee referred to in the information is Michael Milken.

Once the United States Court of Appeals for the Second Circuit permits the Commission to present the agreed upon final judgment to the district court for entry, Drexel will submit a consent and undertaking to the district court in which it states that it consents to the entry of the final judgment "without admitting or denying" (emphasis added) the allegations of the Commission's complaint filed on September 7, 1988.

QUESTION:

Is Milken opposing the plea bargain because Drexel is admitting that he committed fraud?

ANSWER:

Michael Milken has stated that he is opposing the plea agreement on the ground that its provisions requiring that Drexel not employ him following entry of the plea and that Drexel not compensate him for work allegedly performed by him in 1988 are unconstitutional. Milken contends that these provisions deprive him of property without due process of law and constitute an unconstitutional taking of his property.

QUESTION:

The government is seeking $1.8 billion in restitution from Milken, his brother, and a third Drexel employee. While Mr. Milken is reported to have made an astonishing $550 million in 1987, is it really expected that the defendants have assets anywhere near that amount?

ANSWER:

As part of the racketeering element of the criminal indictment, the grand jury alleged that Drexel and its parent company, Drexel Burnham Lambert Group, Inc., was a racketeering enterprise as defined by 18 U.S.C. §1961(4), and that the unlawful proceeds from the pattern of racketeering acts were paid in the first instance to Drexel and then passed through Drexel to the individual defendants in the form of compensation and stock ownership in Drexel. The indictment seeks the forfeiture of the defendants' salaries from 1984 through 1987, their stock ownership in Drexel Group, fees and trading profits obtained by Drexel in connection with allegedly unlawful transactions, commissions and other items derived from the alleged racketeering enterprise.

In pretrial proceedings, Michael Milken was required to segregate approximately $400 million in cash and other assets as collateral and execute a promissory note for $300 million (itself collateralized by other property) as security for the forfeiture sought by the indictment. Lowell Milken is required to post $350 million in cash and a $20 million promissory note as security while Bruce Newberg is required to post $1.6 million in liquid assets.

EDGAR

QUESTION:

We understand that the SEC can reduce its 1990 budget request by $5 million for the Edgar project and $.6 million for the creation of a central registration depository (CRD) -- The former due to a selection in 1989 of an Edgar operational contractor, and the latter due to identified regulatory and procedural matters which will postpone implementation of a major portion of the CRD until 1991. Can the Congress thereby assume the SEC's true budget request in 1990 is $163.1 million rather than $168.7 as submitted?

ANSWER:

No. The SEC requires its full request of $168.7 million to cover unfunded costs. Should the $3.7 million for the January 1989 pay raise not be provided, the SEC would suffer a programmatic reduction of approximately 80 staff years. This reduction would be experienced across all program activities.

	$(mil)
Funded by OMB	168.7
Savings-	
Edgar	(5.0)
CRD	(.6)
Balance	163.1
Unfunded costs-	
Balance of January 1989 pay raise	3.7
Computer purchase (Doubling of lease savings)	.6
Office space requirements (NYRO, LARO and HQ)	.4
Reduce SEC lapse rate by 18 staff years to 7.5%	.9
Revised Balance	168.7

QUESTION:

What is the status of the EDGAR Operational contract? What is the total cost of the contract?

ANSWER:

The eight year contract for the design, development and operation of the EDGAR system was awarded to the BDM Corporation on January 3, 1989. Bidding with BDM were Mead Data Central, Sorg Incorporated and Bechtel Information Services.

The contractor is currently working closely with SEC staff members on the detailed design of the Operational system. A development plan has been drafted which calls for conversion of the EDGAR Pilot filers to the Operational system in mid-1990. The first mandated group of test filers is expected to be phased onto the system in late 1990.

The total estimated cost of the contract is $51.5 million. This estimate does not include the cost of equitable adjustments and technological upgrades that will be necessary at a later date.

PUBLIC UTILITIES HOLDING COMPANIES

In your statement you mention that the CEO's of three of the largest public utility holding company systems asked you to assign additional staff to these filings. We have also heard from them.

QUESTION:

I note that an additional 2 positions are budgeted for this area, but what is the backlog in public utility regulation now, and what is it projected to be at the end of 1990?

ANSWER:

The backlog of applications in public utility regulation was 34 for FY 1988 and estimates for FY 1989 and FY 1990 are 79 and 139, respectively.

QUESTION:

Am I correct that it would require 7 additional professional staffers and $600,000 to get and keep current with the public utility workload?

ANSWER:

The Commission believes, based on current projections, that it will require 22 professional staffers at an additional cost over the 14 contained in 1989 of $500,000 in FY 1990 to get and keep current with the public utility workload.

QUESTION:

The public utility holding companies have indicated a willingness to pay increased fees to cover any additional cost. How should the fee schedule be revised to raise the costs of the additional fees?

ANSWER:

The cost of hiring the additional professional staff could be funded if Congress were to increase the filing fee for form U-1 applications and post-effective amendments from $2,000 to $6,000. To stabilize the Commission's public utility activities, the revenues applied to any additional staff should be independent of the specific fees received for the related filing.

QUESTION:

The 1990 President's budget shows that legislation will be proposed to repeal the Public Utility Holding Company Act of 1935. This subcommittee embraced that a few years ago and ran into a fire storm of opposition. What do you think the chances are of making that change now?

ANSWER:

The Commission does not perceive any substantial lessening of opposition to repeal, and therefore does not believe there is a great likelihood of repeal at this time.

SEC FEES AND FINES

QUESTION:

In 1987, more than $160 million was collected in 1933 Act Fees. These fees declined in 1988 to $122 million and are expected to decline further in 1989 and 1990. Please explain why these fees are declining.

ANSWER:

The drop of registration fees in 1988 reflects the impact of the October 1987 market break. The fee estimates assume in 1989 and 1990 that a reduction in new sales by investment companies and an increase in the redemptions by investment company shareholders will continue, as it did in 1988, to require less to be paid in registration fees. Most investment companies pay such fees based only on the amount of new sales in excess of redemptions (net sales) during a fiscal year.

QUESTION:

Am I correct that the SEC collects its fees in March based on the actual transactions for the previous calendar year? Why can't these collections be on a monthly pay-as-you-go basis and thereby get the money in the Treasury a little faster?

ANSWER:

Under Section 31 of the 1934 Securities Exchange Act, the Commission collects exchange transaction fees on March 15 following the end of the calendar year on which the volume basis of the fees is calculated. Since the fee is collected by the exchanges at the time each transaction occurs, this provision permits the exchanges to earn interest on the fees they collect for an average of seven months.

At the request of legislative oversight committees, about four years ago the SEC prepared estimates on quarterly collection of transaction fees. My understanding is that the proposal was tabled after the exchanges pointed out that earned interest was used to defer administrative expenses required for the collection, recording, and payment of transaction fees. Within the last two years, GAO also looked at the collection of these fees on a monthly basis. I am unaware of any subsequent action being taken by GAO on this proposal.

COMMISSION WORKLOAD

QUESTION:

In your statement you show that the number of registered broker dealer firms has increased from 6,750 in 1980 to 12,140, and is expected to grow by another 1.360 by 1990. Similarly, the number of registered investment companies has increased from 1,461 to 3,500. With all the mergers in the securities firms, and the October 1987 stock market crash, I would have thought that the number of firms would have decreased. Is this a real increase in the number of firms, or of the SEC's coverage of the firms?

ANSWER:

There has been a real increase since 1980 in the number of broker dealers registering with the Commission. This increase is attributable, in part, to the rapid expansion of the securities markets, including the introduction of new securities products. Additionally, the Government Securities Act of 1986 also has contributed to this increase by requiring the registration and Commission regulation of those firms dealing in government securities, and, more recently bank holding companies have been entering the business through the establishment of separate broker-dealer affiliates.

INVESTMENT MANAGEMENT REGULATION

QUESTION:

Proportionately, the largest staff increase is for Investment Management Regulation, that increases by 51 positions, or 20% over the current level of 255. The justifications indicate that this increase is due to the many new and complex financial products, such as securities backed by diverse types of assets including credit card receivables and car loans, etc.

We are now in the midst of a great crisis in the saving and loan industry. While these securities are not government-backed, it sounds to me like we might be setting ourselves up for another disaster.

Can you find the highly skilled examiners you seek to assure that such products do not pose undue risk to the investing public?

ANSWER:

There is little doubt that now, more that ever before, Investment Management (IM) needs a highly skilled staff to deal with the ever increasing complexity of the products and issues that confront it daily. Although recruitment and hiring of new staff is never easy, if IM receives authority to increase its staff to the level requested in its FY 1990 budget, the biggest problem IM will likely face is not finding a highly skilled person interested in working at the SEC, but rather finding a highly skilled person willing to accept the salary the SEC can offer. It would be much easier to attract and, equally important, to retain highly skilled persons if the SEC were permitted to offer a salary that is more competitive with that offered by private concerns. At their current level, the salaries the SEC can offer place the agency at a severe disadvantage in the competition for the services of highly skilled persons. Simply put, government salaries have not kept pace with those available in the marketplace and this disparity is further exaggerated in the recruitment of talented and skilled individuals.

However, IM is in critical need of the additional staff it is requesting for FY 1990. Without this staff increase, IM will continue to fall further behind in its efforts to regulate an industry that is expanding in both size and complexity. Recruitment and hiring of the additional staff would be a challenge but one that IM expects to meet successfully.

INTERNATIONALIZATION

QUESTION:

On November 15, 1988, the SEC issued a policy statement on The Regulation of International Securities Markets. What has been the response from international securities regulators to this statement? If the international securities regulators view this policy statement favorably, how will the SEC proceed?

ANSWER:

Last November at the last meeting of the International Organization of Securities Commissions (IOSC), the Commission issued a policy statement on The Regulation of International Securities Markets. The policy statement sets forth principles and goals that the Commission considers to be central to achieving a truly global market system. The response among other market regulators was decidedly positive. The Commission was applauded for taking a leadership role in setting out proposed goals that were sensitive to cultural differences and national sovereignty concerns.

The Commission believes that the first step is to try to achieve some degree of consensus among world regulators on what the policy objectives should be and then on how to accomplish them. Thus, the Commission intends to continue to pursue the goals outlined in the policy statement through international forums such as IOSC. The Commission also believes that much can be achieved through discussions on a bilateral basis with other securities regulators. For example, the Commission recently hosted a meeting with officials of the Japanese Ministry of Finance, Securities Bureau, to discuss matters of mutual interest.

QUESTION:

The 1990 request includes $250,000 to allow the Commission to obtain overseas legal counsel to assist in obtaining evidence from foreign countries. We already have FBI legal attaches at many of our embassies. Could they help you in securing the evidence you need?

ANSWER:

In cases where issues arise which involve coordination of evidence gathering with foreign law enforcement officials, the Commission staff may consult with the FBI attaches. However, the Commission also retains foreign lawyers to provide legal advice in cases where we need a foreign attorney who is licensed to practice law in the jurisdiction in question and who thus can appear in foreign court on the Commission's behalf. In such cases, FBI attaches are not qualified to provide the necessary advice or make formal appearances in court.

To be more specific, the Commission retains foreign lawyers to provide advice regarding the application of foreign law to a particular evidence gathering problem or to represent the Commission in a foreign court. For example, when proceeding under the Hague Evidence Convention, the Commission seeks expert legal advice to ensure that the foreign country's legal rules which govern assistance are followed and, in the event legal challenges are posed, that the Commission's position can be effectively presented in that country's courts. In such circumstances it is critical that the Commission's interests be represented by a member of that country's legal community.

QUESTION:

How much does the SEC now spend for international travel?

ANSWER:

In 1988, the SEC spent approximately $84,000 for 41 trips for international travel. In addition, approximately $54,000 for 31 trips for international travel was reimbursed to the SEC by host payments.

QUESTION:

Is the SEC moving towards establishing a permanent presence overseas?

ANSWER:

The Commission has created permanent staff positions and/or responsibilities in the area of internationalization. The Commission has assigned staff in each of the Divisions and Offices in the Commission to focus on internationalization issues and, last Fall, issued a policy statement on The Regulation of International Securities Markets, which sets forth principles and goals that the Commission considers to be central to achieving a truly global market system. The Commission believes that the best way to achieve many of the goals outlined in the Policy Statement is through bilateral discussions, rather than multilateral arrangements because multilateral discussions often offer less hope of achieving any true consensus.

The Commission believes that a great deal can be achieved through bilateral discussions with other securities regulators. Examples of successful bilateral initiatives are the Memorandum of Understanding negotiated with the U.K. and the various surveillance information sharing agreements the Commission has encouraged U.S. self-regulatory organizations to enter into with their foreign counterparts (e.g., the draft American Stock Exchange-International Stock Exchange (ISE) surveillance sharing agreement the ISE has described as a "model agreement" and on which the Commission has extensively commented). Another example is the meeting with officials of the Japanese Ministry of Finance, Securities Bureau, (MOF) that the Commission hosted last January to discuss matters of mutual interest. One of the results of that meeting was the formation of a working group comprised of members of the Commission staff and members of the MOF staff. The Commission hopes that this meeting will be the first of many meetings held on a regular basis that will result in a close working relationship between the two agencies.

In addition, the Commission believes that international groups of securities regulators such as the International Organization of Securities Commissions (IOSC), as well as international forums for market participants such as the Group of 30 (focusing on international clearance and settlement issues) provide good opportunities for the Commission to advance its views on how to address many issues internationalization of the securities markets poses.

QUESTION:

Will the $3,000 requested for the reception and representation fund be sufficient in 1990?

ANSWER:

The $3,000 will not be adequate to meet the demands created by the Commission's international initiatives that I anticipate in 1990. The Commission is heavily involved in negotiations and other sensitive forms of interaction with foreign government officials that typically involve business dinners, meetings and other hospitality events. Foreign governments recognize these as important obligations and provide the funds necessary to properly discharge them. Specifically, when the SEC Commissioners and senior staff travel to a foreign country to negotiate agreements, meet on areas of mutual interest or pursue fraudulent activity, they are often invited to a business dinner or a similar social event that furthers the mission. When those foreign officials travel to the U.S. for similar purposes, the SEC should be able to reciprocate, even if it is in a much more modest fashion. By providing a reasonable level of hospitality the SEC would be able to further its leadership position in global securities issues. Even a modest level of hospitality cannot be met within the existing fund's limitation. I recognize the sensitivity of these types of accounts, but feel strongly that the SEC be able to meet fully its international responsibilities.

SEC STAFFING

Mr. Ruder, on page 4 of your formal statement you state that between 1980 and 1988, the Commission's staff grew by less than one percent, from 2,041 staff years to 2,048 staff years. I think for the readers of the record we should include a chart that displays the SEC budget history over the last 10 years.

[The chart follows.]

SEC BUDGET HISTORY FROM 1980 THROUGH 1990

YEAR	CONGRESSIONAL BUDGET REQUEST			APPROPRIATION			ACTUAL		
	POS.	FULL TIME PERMANENT STAFF YRS	TOTAL STAFF YRS	POS.	FULL TIME PERMANENT STAFF YRS	TOTAL STAFF YRS	POS.	FULL TIME PERMANENT STAFF YRS	TOTAL STAFF YRS
1980	2,100	1,991	2,016	2,100	1,999	2,035	2,100	2,009	2,041
1981	2,105	2,005	2,041	2,021	1,970	2,006	2,021	1,960	1,982
1982	2,141	2,023	2,059	2,021	1,890	1,920	2,021	1,864	1,882
1983	1,896	1,765	1,795	2,021	1,892	1,912	2,021	1,899	1,921
1984	1,896	1,775	1,795	2,021	1,881	1,901	2,021	1,863	1,885
1985	2,042	1,913	1,933	2,046	1,916	1,936	2,046	1,914	1,940
1986	2,046	1,916	1,936	2,080	1,914	1,934	2,080	1,871	1,898
1987	2,086	1,973	1,993	2,086	1,930	1,950	2,086	1,896	1,930
1988	2,267	2,066	2,086	2,267	2,066	2,086	2,267	2,009	2,048
1989	2,420	2,222	2,242	2,267	2,111	2,131			
1990	2,451	2,249	2,269						

QUESTION:

Am I not correct that in fiscal years 1983 and 1984 the administration proposed staff reductions below the number Congress provided?

ANSWER:

Yes, the administration proposed staff reductions below the number Congress provided in fiscal years 1983 and 1984.

QUESTION:

The Commission's budget includes a base adjustment of $2.5 million to increase journeyman and entry grade salaries. What problems is the SEC experiencing as it had been a common view that an SEC appointment was eagerly sought by those looking for a career in the securities industry?

ANSWER:

In 1988, the Commission's turnover rate for specific positions was as follows: secretaries, 35%, computer specialists, 19%, attorneys, 15%, accountants, 14%, and securities compliance examiners, 13%. Unfortunately, last year was not an aberration -the agency has been combating elevated turnover rates for more than seven years.

Attorneys who leave the SEC typically receive annual salary increases between $25,000 and $35,000. Accountants who leave the SEC typically receive annual salary increases between $13,000 and $35,000. Securities Compliance Examiners typically receive $25,000 to $45,000 annual salary increases when they leave the SEC. When those ranges of salary increases are multiplied by the 1988 losses for each occupation, the result is, that departing SEC professionals received annual salary increases between $3,535,000 and $5,515,000. The requested $2,484,000 will not produce parity. However, it could significantly reduce the excessive turnover while providing greater program continuity and productivity.

While the Commission does attract many qualified professionals eager for careers in the securities industry, we, like other agencies, find it increasingly difficult to attract them in sufficient numbers. Moreover, the Commission is not the only viable career alternative as many recent graduates are hired by the industry at salaries significantly higher than the Commission is allowed by law to pay.

QUESTION:

What is the status of the SEC's implementation of the Inspector General Act of 1988 that requires the agency to establish an Office of the Inspector General?

ANSWER:

In order to meet the requirements of the 1988 amendments to the Inspector General Act, the Commission will provide a substantial increase in resources from the current 4 staff years to 7 staff years in 1990. Total expenditures for the Inspector General (IG) are estimated at $470,000 in fiscal 1990.

The SEC is complying fully with both the letter and the intent of the statutory requirements. On February 15, 1989, Walter Stachnick was appointed as the SEC's Inspector General. Prior to this appointment, Mr. Stachnik has been the agency's Director of Internal Audit. Implementation plans for this new function have been carefully developed and the transition is proceeding smoothly. The support offices and the General Counsel will assist the IG through formal procedures established in memoranda of understanding. Using this approach, the IG will be able to preserve its autonomy without having to duplicate support services.

QUESTION SUBMITTED BY SENATOR WARREN RUDMAN

SEC BUDGET

This Committee has tried to be as supportive as possible of SEC funding requests in the face of very stringent budget constraints. In 1989 most of the agencies in the Senate bill were held to a 1% increase over 1988. However, Senator Hollings and I agreed that ten high-priority programs should be exempt from this ceiling, and so we included an increase of 11% for the Securities and Exchange Commission. Unfortunately this could not be sustained in conference with the House, but we did emerge with an increase of 5.4%.

QUESTION:

For 1990 the Commission is requesting an increase of $26 million or 18.3%. Again, Senator Hollings and I want to be supportive of your budget and will do our best to meet your request. We do understand, however, that you have experienced $5 million in savings in the operational contract for your new electronic filing system, EDGAR. Therefore, can we reduce your budget request by $5 million and still provide the Commission with the programmatic resources it needs consistent with its budget?

ANSWER:

No. The SEC requires its full request of $168.7 million to cover unfunded costs detailed below.

	$(mil)
Unfunded costs- Balance of January 1989 pay raise	3.7
Office space requirements (NYRO, LARO and HQ)	.4
Reduce SEC lapse rate by 18 staff years to 7.5%	.9
	5.0

Should the $3.7 million for the January 1989 pay raise not be provided, the SEC would suffer a programmatic reduction of approximately 80 staff years. This reduction would be experienced across all the program activities.

SUBCOMMITTEE RECESS

Senator HOLLINGS. Thank you very much, Mr. Chairman, you and your associates today. This concludes our hearing. The subcommittee will be recessed until next Tuesday, April 11 at 9:30 when we will hear the request of the Board of International Broadcasting and the U.S. Information Agency.

[Whereupon, at 11:20 a.m., Thursday, April 6, the subcommittee was recessed, to reconvene at 9:30 a.m., Tuesday, April 11.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1990

TUESDAY, APRIL 11, 1989

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 9:49 a.m., in room S–146, the Capitol, Hon. Ernest F. Hollings (chairman) presiding.

Present: Senators Hollings, Bumpers, Rudman, and Kasten.

BOARD FOR INTERNATIONAL BROADCASTING

STATEMENT OF MALCOLM S. FORBES, JR., CHAIRMAN

ACCOMPANIED BY:

BEN WATTENBERG, VICE CHAIRMAN
BRUCE PORTER, EXECUTIVE DIRECTOR
EUGENE PELL, PRESIDENT, RADIO FREE EUROPE AND RADIO LIBERTY

OPENING STATEMENT

Senator HOLLINGS. This morning, the subcommittee will hear the requests of two U.S. agencies dedicated to broadcasting the truth around the world, the Board for International Broadcasting and the U.S. Information Agency. Between them, they are requesting a total of $323,845,000 to continue the modernization of their facilities, the largest amount being the $207 million for the completion of the Israel radio relay station.

This is our first hearing with our foreign affairs agencies. Over the last 2 years, these agencies were protected by the budget summit agreement that made specific provision for budget category 150, international affairs. The requests for the international affairs agencies in this bill total $4,723,968,000, an increase of 21 percent over 1989.

Did President Bush see that? A 21-percent increase in spending. Senator Rudman and I are members, of course, of the Budget Committee, and we will be looking at that very carefully to see how we can increase one man's budget 21 percent and cut all the rest. I don't know how we will do that.

On Thursday, we will hear from the Secretary of State, and I imagine he will be urging still the separate allocation for the 150 accounts.

We will begin with the Board for International Broadcasting with a total request of $425 million, including the $207 million for the Israel radio relay station. Appearing on behalf of the Board is Malcolm S. Forbes, Jr., the Chairman; Ben Wattenberg is not here, but he is going to be here; Bruce Porter, the Executive Director; and Eugene Pell, the President of Radio Free Europe and Radio Liberty.

Mr. Forbes, we are delighted to see you again. I hope the President reappoints you. That will ruin you, but I still hope so, anyway. You have done an outstanding job for the Nation. You can put your statement in its entirety in the record, highlight it as you wish, or give it in full.

Mr. FORBES. Thank you very much, Mr. Chairman, especially for those kind words. The literary writers sometimes point out, when your wish is granted, you end up wishing it hadn't been. I may find that true of the reappointment.

I will submit my formal testimony for the record, and I would just like to take this opportunity to point out a couple of highlights of our presentation.

NEW ERA IN EASTERN BLOC

As you know, we are living in a time of extraordinary ferment in Eastern Europe and the Soviet Union. One of those manifestations has been the lifting of jamming a couple of months ago for the first time in almost 40 years since these radios began in the early 1950's. The end of jamming provides many opportunities, but it also provides us, we think, with a genuine obligation.

The message that we have been receiving from dissidents, from our listeners via surveys, letters, telephone calls, from independent organizations such as Solidarity and even from some official interviews, is overwhelmingly that these radios play a critical part. They are the most effective instruments around for encouraging reform to see that this process that is beginning continues.

As you know, glasnost, so far, has been very selective. For example, there are a number of taboo subjects, including the impact on health and the environment in the aftermath of Chernobyl, the fact of rationing in much of the Soviet Union for potatoes and meat and things of that sort. But the message that comes through from our listeners and from the dissidents and Solidarity and others is that they see us as the spur and the verifier, the verifier of information, and the spur for continuing reform.

But also what is coming through is that they are looking now to us for something more. There was a very intriguing survey a couple of days ago in a Soviet publication called Lit Gazeta. They put out a questionnaire, and they got 200,000 responses. What came out of that survey was that everyone now knows that communism doesn't work, but the people who responded really don't know yet, what the concrete steps are on improving and changing their lives politically and economically.

So, for example, you see support for the concept of free enterprise, but when asked about what they think of these new cooperatives which are free enterprise stores, health clinics and the like, they say, "Oh, they are exploiters; they are profiteers; they charge too much."

So what comes through these surveys is they are looking to us for concrete ways in which, how, why is the West successful? Why has it done better? How can we make these changes without getting an adverse reaction from Moscow and the authorities?

Senator HOLLINGS. What do you tell them?

INNOVATIVE RFE/RL PROGRAMMING

Mr. FORBES. We have changed the programming. Gene can get into it with his remarks and the questioning, but first of all, we are providing more independent opinion, more debates. For example, Walesa, the leader of Solidarity met with the government union's leader the other day, a very provocative debate; it touched on a lot of subjects, on pluralism, setting up democracy, free elections.

What we did when we got that debate, we broadcast it not only in Polish, but we translated it into Russian. We took two announcers, one to play the role of Walesa, the other the government spokesman, and broadcast it throughout the Soviet Union.

Well, that sounds very traditional and mundane to us. It was revolutionary for our listeners in the Soviet Union, and since the end of jamming, our audience share there looks like it is going up by a magnitude of 30 to 50 percent.

So you have discussion groups; you have forums; you have economic discussions. This survey and others are simply underscoring that they are looking to us, not only from the radios, but also from the West and the U.S. Government, to help translate these new attitudes into real economic and political achievements.

To give some gratuitous advice to Mr. Baker, that can be done by having Mr. Bush visit Poland and Hungary this summer. They are apparently talking about it. We hope they do it. Gorbachev is going to West Germany in June. He will get a reception that will be compared to JFK's in the early 1960's. It would be a good antidote to have Bush go to Eastern Europe, particularly Hungary and Poland, where the most progress has been made and where the reception will rival that of anything Gorbachev gets in West Germany.

There is a lot that can be done on the economic front, not in terms of giving Government money, but in terms of supporting credits to some of the farmers and free enterprise entities. There are a number of steps that can be taken. There is a yearning there for us to help provide a formal debate where this kind of information can be discussed so that the process of reform can continue and those reforms don't get dropped in the middle of the stream.

FISCAL YEAR 1990 BUDGET REQUEST

There are two parts of our budget that you mentioned that I would like to touch on. One, there is an item in there for $27 million to finish up the refurbishing of our obsolete West European transmitting facilities.

This would turn an outmoded facility we have in Portugal to a modern relay station. Right now, for example, we are unable to broadcast to Bulgaria and Romania simultaneously during prime time. We have very serious restrictions in broadcasting to the Baltic states, which is an area of great ferment.

This refurbishing should have been done 15 years ago. It was a concept approved in 1985, and we hope that if we get this authorization, we can complete it in the next 24 months.

REQUEST FOR ISRAEL RADIO RELAY STATION

The major part of our request, which you touched on in your opening remarks, is for the Israel relay station. We are asking for an appropriation of $207 million. That will not be spent immediately. It will be spent over a 3 to 3½ year period. It is a 5-year project. We have done 2 years of it, and I think it surprised OMB that we have actually kept meticulously to our time table and to projected costs.

We are coming to the point now where we are going to have to let what they call the broadcast system contract. It would be about $190 million, and it would be spent over 3 years. But in order to let the contract now, we need the appropriation up front even though the actual outlays will take a 3 to 3½ year period. So this year, we look like villains in the sense that our overall appropriation would go way up. Next year, we will look like heroes, because it will go down without that $200 million lump.

This relay station goes to Soviet-Central Asia, which is home of the Moslem population of the Soviet Union. The Moslems are the fastest growing part of the Soviet population. They are becoming more and more politically conscious. They make up a large part now of the draftees into the Soviet army. It is a yeasty (sic) area, and it is one where our signal now is either very weak or nonexistent. When this relay station is completed in 1992, we would be able to reach that part of the world with a very clear and strong signal, and that is why we have been moving ahead on that project.

On the operations side, when you adjust for inflation, this is at best a standstill budget. Actually, in real terms, it will go down a little bit. The reason for this seeming increase is primarily the appropriation to let this contract for the Israel project. And then, I think in the future, we will be much more benign supplicants than these numbers may just look like right now.

But to sum up, we are in an extraordinary period. Even though we are small potatoes by budgetary standards when you look at $1 trillion plus, we think these radios and the contests that we are now engaged in with these radios, play an enormous role in affecting internal events in Eastern Europe and the Soviet Union.

PREPARED STATEMENT

Senator HOLLINGS. Thank you. We will insert your prepared statement at this point in the record.

[The statement follows:]

STATEMENT OF MALCOLM S. FORBES, JR.

Mr. Chairman, I am delighted to appear before this subcommittee to support the Administration's request for appropriations for the Board for International Broadcasting, including grants to Radio Free Europe/Radio Liberty for fiscal year 1990.

With the Soviet Union and Eastern Europe at a crossroads of history, the mission of Radio Free Europe/Radio Liberty (RFE/RL) is more important than at any time in its nearly 40 year history. The countries of Eastern Europe and the Soviet Union have entered an era of change that will determine whether they pursue the tragic course of the past or embark on a new path of gradual evolution toward more open societies. It is impossible to predict how long this era of change will last or what its final results will be. The United States can affect the nature and direction of reforms in the East bloc by ensuring that all citizens in the region have access to the full range of information necessary for making intelligent political decisions.

Cessation of Jamming.—Mr. Chairman, as you know, the Soviet Union and its East European allies ceased all jamming of Radio Free Europe/Radio Liberty late last year. The cessation of jamming has opened up a whole new era of opportunities for RFE/RL. Preliminary indications are that Radio Liberty's audience in the Soviet Union is increasing dramatically as millions of listeners, finally able to receive a clear signal, literally "vote with their dials." Travelers from the East bloc tell us that both Radio Free Europe and Radio Liberty have become the radio stations of first choice throughout the region. This is also reflected in the flood of letters and telephone calls that come into Munich each day from all parts of the USSR and Eastern Europe. There is intensive interaction between the broadcasting desks in Munich and their audiences, with dozens of interviews with important political and cultural figures taking place in person or by telephone each week. It is no exaggeration to say that the morale in our broadcasting services has never been higher and the impact of Radio Free Europe/Radio Liberty on the East bloc has never been greater than it is today.

Foreign Policy Role.—Radio Free Europe/Radio Liberty is the principal U.S. Government program specifically aimed at encouraging peaceful change inside the Soviet Union and Eastern Europe. The enormous impact of these surrogate radios should never be underestimated. Through its 23 language services, RFE/RL broadcasts over 1,000 hours a week, reaching more than 57 million listeners in the Soviet Union, Eastern Europe, and Afghanistan.

By broadcasting comprehensive news about internal developments and international issues, presenting lively and open debates about historical events and current policies, and giving in-depth assessments of outstanding problems between East and West, RFE/RL promotes positive change and reform in the closed societies to which it broadcasts. This is a crucial aspect of U.S. foreign policy.

Current Challenges.—The last few years have posed immense new challenges for these radio stations. First, Gorbachev's policies of glasnost' and perestroika have allowed for greater truthfulness and candor in the official Soviet press. Topics that were once the exclusive domain of RFE/RL have begun to appear in Soviet newspapers and television. While competition from RFE/RL may encourage yet more openness in the Soviet media, much will continue to go unreported by the official media. Radio Liberty's broadcasts about Soviet history and culture, as well as about such domestic social problems as rampant alcoholism, the decline in health services, hidden unemployment, inflation, rationing in rural areas, and education, fill a vital gap. Not only do these reports inform Soviet citizens, but they also contribute to the further expansion of glasnost'. So long as RFE/RL continues to broadcast uncensored news, Soviet officials will be obliged to be more candid themselves.

A recent example of the challenge RFE/RL presents to the official media was cited by Moscow News when it praised RL's coverage of the Armenian earthquake. RL had immediately canceled regularly scheduled programming to devote full coverage to the earthquake and its aftermath. Soviet radio, in the meantime, continued to broadcast packaged programs, reporting on the earthquake only during scheduled newscasts. RL set the standard for coverage of the Armenian tragedy, providing millions of listeners with a comprehensive account of the events.

This kind of journalism—thorough, accurate, timely—is practiced daily at RFE/RL. The economic and labor crisis in Poland, the demonstrations in Prague, the growing pains of glasnost' and perestroika all received thorough and balanced coverage. The RFE Polish Service conducted over 190 interviews with the leading political, cultural, and religious figures in Poland during 1988—which would be a remarkable feat for any news media in any country. The Czechoslovak authorities singled out the role of RFE broadcasts in the recent developments among dissidents. The RL Russian Service interviewed numerous leading figures in the Soviet Union, among them the maverick politician Boris Yeltsin, and continued its rich tradition of cross-reporting, informing citizens, throughout the USSR about events in the Soviet republics and developments in Eastern Europe.

FISCAL YEAR 1990 APPROPRIATION

Appropriation of the fiscal year 1990 BIB budget before you today—$425,175,000—is critical to the continued effective operations of Radio Free Europe/Radio Liberty. Over 55 percent of this amount will be directed to completion of the modernization of RFE/RL's transmitting system. In other words, $234.8 million is a critical, one-time appropriation for capital improvements to the transmitting system of RFE/RL, without which RFE/RL's signals cannot be clearly heard throughout the listening areas.

Refurbishment Program.—RFE/RL's European technical modernization program, begun in fiscal year 1985, is nearing completion. A final installment of $27.8 million will finish the long overdue multiyear $77.25 million refurbishment of RFE/RL's existing radio relay stations. This $27.8 million is required to complete the conversion of an outmoded receiving station in Maxoqueira, Portugal to a modern, six-transmitter, remotely-controlled relay station. This conversion is already underway, but only one transmitter and two antennas are being ordered with funds already appropriated. When completely operational in 2½ years, the Maxoqueira facility will correct significant antenna deficiencies in RFE/RL's existing transmitting system, providing for the first time a sufficient number of low frequency antennas to allow for prime-time coverage of Bulgaria and Romania simultaneously. In addition, the Maxoqueira site will provide much-needed flexibility of coverage to areas of the Soviet Union that will not be covered from the new Israel site. This facility will include RFE/RL's first 500kw transmitters, the standard of most European broadcasters and a necessity for competing in the crowded shortwave spectrum.

Relay Station in Israel.—Appropriation of $207 million is needed for final funding of the new U.S. radio relay station in Israel that will be used jointly by the Voice of America and Radio Free Europe/Radio Liberty. This subcommittee's support for the Israel project has been instrumental in the initial funding and preliminary design work for the station. The Board sincerely appreciates the Committee's support for this important project. This relay station will greatly enhance RFE/RL's and VOA's capacity to reach the strategically crucial Central Asian and Transcaucasian regions of the Soviet Union. This area includes Georgia and Armenia, as well as five republics with large and fast-growing predominantly Moslem populations, whose proportions and influence in the USSR are increasing. The site will also enable VOA to reach a vast audience in Europe, northern Africa, and Asia. When operational in 1992, this new site will increase RFE/RL's and VOA's signal strengths by up to 300 percent. For the first time, RFE/RL and VOA will achieve "one-hop" coverage of Central Asia, greatly enhancing the audibility of these programs.

Construction of this new relay station was made possible by an agreement between the United States and Israel that was signed in June, 1987. Construction is estimated to cost $274 million, of which $67 million has already been appropriated to the BIB. By agreement with USIA, the BIB has been designated the lead agency and will seek Congressional authorization and appropriation of all necessary funding for the construction of the station. (VOA contributed $16 million in fiscal year 1988 toward implementation of this agreement.) Initial appropriations in fiscal year 1988 and fiscal year 1989 covered funding of the design of this 16-transmitter station and contracts with Israeli firms and Israeli governmental entities for initial site preparation, flood control, road relocation, electrical power, facilities, security and water systems.

In order for the project to remain on schedule and within budget, it is necessary to sign the main construction contract in fiscal year 1990. Under the terms of the international agreement, this major construction contract will be awarded to an Israeli prime contractor who will subcontract for American-manufactured transmitters and antennas. Without appropriation of the full amount, progress on the station will be slowed considerably and costs will escalate dramatically. Full appropriation is extremely important at this juncture in the contractual process to insure that the station is operational in a timely manner.

Operations.—The remainder of BIB's fiscal year 1990 request for appropriations is for the regular operations of BIB and RFE/RL. RFE/RL's operational budget for fiscal year 1990 is austere, not even fully allowing for overseas inflation. Any necessary operational changes will be accomplished by means of internal reallocations, since there are no enhancements in the budget request.

The greatest operational challenge facing RFE/RL is to respond effectively to the end of jamming despite severe budgeting constraints. Additional original programming is replacing reruns and repeat broadcasts; across-the-board live newscasts and additional morning shows have been put in place; and more innovative regular programs—roundtable discussions, interviews, more religious programming, historical features—are being instituted. These improvements are significantly increasing the quality and impact of RFE/RL programming.

Mr. Chairman, once again I urge your Subcommittee to support our total appropriation request. It is imperative that the vital life-line of Radio Free Europe/Radio Liberty remain extended to the people of Eastern Europe and the Soviet Union.

ECONOMIC POLICY

Senator HOLLINGS. Referring back to the poll taken and the frustration and the reflection that the people are being taken for a ride by the downtown retailers, other than just getting them together and having meetings and setting up exchanges, tell them to follow Deng Xiaoping. He started in the countryside. If Jefferson and Madison and Hamilton had just started with trying to get everybody a cheap price—since that is all this Government is doing in 1989—but if we had started in that direction in 1789, we would have resolved in the Constitution of the United States of America that we are organizing Government to get everybody a cheap price, consumerism. We would have never gone anywhere, and wouldn't have had any democracy.

You are right. The retailers have us in the hands of the Philistines now. We can't get a trade policy because all the politicians think the purpose of Government is to get a cheap price, and consumerism. Have you ever heard of such nonsense? [Laughter.]

Deng started out in the countryside in his cabinet, not down on "Main Street" with his retailers. For God's sake, they will never do it, so you will be meeting on the wrong thing. You write it out for them and tell them to follow China.

Mr. FORBES. You make a very good point, Mr. Chairman.

Senator HOLLINGS. It is obvious. Deng started and got the countryside for the farmers; now they have got the downtown for the workers. They are working in China with 1 billion 100 million. They can't get it going in Russia because they are starting on the wrong end. Well, thank the Lord we didn't start like that. I am glad that Jefferson was an agriculturalist.

ANTENNA REDUCTION AT ISRAEL STATION

With regard to the reduction of the six antennas, relating to the Russian jamming, are you not saving some money there?

Mr. FORBES. It is about $20 some odd million. The original projected cost of the project was $294 some odd million. It has now been knocked down to $274 million as a result of that.

SOVIET COLLECTIVISM

Mr. FORBES. Appropro to what you discussed, one of the key reforms in the Soviet Union, which is being discussed on Radio Liberty, is breaking up agriculture collectivism; in other words, opening up the countryside.

Senator HOLLINGS. Start there; don't start it down on "Main Street". We haven't licked that act in 200 years.

Mr. FORBES. That is one of the things that is being pushed, is that if you want real reform, you have got to break up these collectives. So far, they have been a little reluctant to do it.

Senator HOLLINGS. So that you understand, it was a very amusing thing when we debated the textile bill. They wrote these real nasty editorials that there was $4 million contributed in the last two Congresses by PAC's to the Congress. Well, they have got 435 plus one-third, plus another third, because there was two Congresses on the Senate side. That was sort of peanuts, really, just $4 million contributed to all of those candidates.

The truth of the matter, Roger Milliken, a principal in my State, said he won't give to a Democrat. I don't get anything from him. That suits me fine.

So I went down and got the Washington Post's annual statement and in 1987—this was in the paper in 1988, they made $1 billion. Eight hundred ninety-three million dollars was from retail advertising; 89.3 percent was made from the retailers. Who was being bought, the Washington Post or Hollings? We found out who was being bought. That is the crowd running around hollering, "The trade war, trade war, free trade, free trade."

We have got a trade war that has been going on for a good 20 years. The Europeans are joining it on the ground with their Common Market in 1992. Well, what in the world do you think they are going to have? Market force is operating, not political, free trade, free trade; balance up the table and all of that nonsense. You make it to the economic interests, and you will get a deal.

Senator Rudman and I have got to go to another hearing in the Defense Subcommittee, so I yield to him.

Senator RUDMAN. Thank you, Mr. Chairman. We have a series of hearings here every year, and they are all actually one big trade hearing here with the chairman. [Laughter.]

I think if we have a hearing on SDI, the chairman will find a way to bring trade into it.

Senator HOLLINGS. I hope so. [Laughter.]

IMPORTANCE OF BIB

Senator RUDMAN. Let me just echo what the chairman said. I, for one, believe that we have a wholly different atmosphere in which we are operating in which the things that you do are extremely important, more important now than they have probably ever been save the period, possibly, in the early 1950's, when the atmosphere was totally different. In fact, probably even more important than that.

I had a very interesting meeting in my office yesterday with the former chief of the German General Staff, who is now commander of U.S. forces and all forces in Central Europe. We talked about the whole situation politically in Western Europe vis-a-vis how it affects NATO policy and what we are going to do.

There is a great disarray, as you know, even among the Western governments as to what we will do on the subject of modernization and so forth. I have the very strong feeling that if Mr. Gorbachev means what he says and says what he means, that in a very odd way, what you do might well help him against some of his adversaries in the Soviet Union.

That is a side of what you do that maybe some people don't pay much attention to, but I certainly believe that to the extent that the Soviet people can understand what Western democracy is all about and as Mr. Gorbachev explains his policies of perestroika and glasnost more definitively, as some scholars think he will in the coming year, that what you do is of vital importance, not only to us, but possibly to him. It is kind of an interesting way to look at it, but it is the way some people do look at it.

STATUS OF CURRENCY FLUCTUATIONS

I just have, really, one brief question. I am going to support your request this year because I think it is very important. You know, we have had some real problems with currency over the last several years, and we have had to come back and help you reprogram and find money because of the terrific kick you took as the German mark really soared.

This year, it appears that you are going to have a surplus of about $17.2 million in 1990 in foreign currency. Obviously, one of the things we could do would be to help finance your 1990 request by using that, whereas I expect what you might like us to do is to hold it as a reserve for future changes in currency.

Well, I suggest that it is not really having it both ways, but I want you to talk about that for a moment so we can make a sensible decision as to how we are going to handle it.

CURRENCY RESERVE FUND

Mr. **Forbes**. Well, you are very correct. In the past 3 fiscal years, our losses have totaled almost $75 million. This year, assuming the dollar does hold its present level, we will have a surplus of $17 million.

Ideally, that $17 million ought to go into a reserve, because the kind of fluctuations we have seen in the past 10 or 12 years. You gain one day; the next day, there is probably going to be losses some way or some time in the future. Our official position is that we ought to save for the rainy day.

If it came down to the question, as you imply, that that is very nice in theory, but in reality, which would you rather have, the reserve or using the funds to fund, say, the European modernization, if it came down to a hard choice between having the reserve and having the modernization, with considerable reluctance, I think we would have to go with the actual modernization.

NEED FOR REFURBISHMENT FUNDS

As I mentioned in my opening remarks, that refurbishing in Europe should have taken place 10 or 15 years ago, and it has really hobbled us in terms of broadcasting flexibility to meet our needs. For example, when Chernobyl happened and we had wanted to increase our broadcasting to the Ukranians, we had to take that extra broadcasting time out of the hides of our other European services.

So we have this gridlock in our transmission system. We had a shop in Portugal where we had to cut spare parts because the manufacturer didn't make the spare parts anymore. It was sort of a working museum. So reluctantly, if it came down to a choice of one or the other, we would go to modernization.

Senator **RUDMAN**. I am not sure it will, but it may. We are going to be talking later about our budget resolution. Senator Hollings and I serve on both Budget and Appropriations. We kind of see it coming and going. [Laughter.]

Mr. **FORBES**. Right.

Senator **RUDMAN**. Mainly going.

Senator **HOLLINGS**. Right, mainly going.

Senator **RUDMAN**. We have got some tough choices to make, but obviously, I just want to know your position on the record. We would prefer, I think, to have it as a reserve, although you really have to look at everything in perspective. The hearing we are supposed to go to very soon, because we also serve on Defense Appropriations Subcommittee, is on the B-2 bomber, the Stealth bomber. I look at what you are requesting here, and then I look at the current flyaway price of $500 million per airplane for the B-2.

So, I mean, everything is relative, I suppose. Thank you, Mr. Chairman.

STATEMENT OF BEN WATTENBERG

Senator **HOLLINGS**. Thank you. Mr. Wattenberg, we noted your presence already in the record. Now we will be glad to let you fill in our record. Is there anything you wish to add?

Mr. **WATTENBERG**. I just wanted to make one brief point, if I could, about our foreign policy and the role RFE/RL plays. We have all talked about it, but as I have been trying to think through, what is going on in the Soviet Union, I recall that there was an American foreign policy before the Communists. Anticommunism is not the only foreign policy the United States has ever had. We all grew up with it, and it was an accurate one and a valid one, but one that is becoming more difficult to maintain for all the obvious reasons.

There was an earlier American foreign policy, and that was called democracy. That is what Theodore Roosevelt was talking about, and it helped shape a friendly world, which is the purpose of RFE/RL.

It seems to me now more than ever, the nature of the world is going to be shaped by this contest of ideas. With the cessation of jamming in the Soviet Union, which I think is probably the single most important part of glasnost in the country, the Soviets revealed a willingness to be challenged by these tough stations.

There is a wonderful dynamic at work. It lets RFE/RL be better because we don't have to fight the jamming, and because their listeners are able to hear, it forces a response. It does all the right things. This contest of ideas puts us on the offensive in a way that makes it valuable—and as you know, I am pretty much of a hawk—in a way that is more important than those Stealth bombers. The world is going to be shaped by whose ideas are in the forefront in the next decade, and we are really in that enterprise. It is a lot of money, but in terms of the big picture, it is not a lot of money.

Senator HOLLINGS. I hope you mean cautious to mean credible. I mean, given this opportunity, you have got to be super cautious to be objective.

Mr. WATTENBERG. Oh, absolutely. The stations, in terms of programming, and I know we talked to that, have to be extremely professional.

Senator HOLLINGS. And accurate.

Mr. WATTENBERG. And accurate. That is all we have to do. Because we have got the story.

Senator HOLLINGS. Yes; that is what I am saying.

Mr. FORBES. A good example is the conflict between the Armenians and the Azerbaijans. We bent over backwards to make sure that the reports of casualty figures are verified in several different ways.

Senator HOLLINGS. And has balance? In other words, you do operate with the fairness doctrine. [Laughter.]

Senator RUDMAN. This has now become a Commerce Committee hearing. [Laughter.]

Mr. FORBES. One example in trying to be credible was after the Chernobyl accident, one of the wire services had a report that 2,000 people had been killed and a number of American and Western media picked it up. We did not run that report because we didn't have what we considered a reliable second source, and it turns out we were right.

ADDITIONAL COMMITTEE QUESTIONS

Senator HOLLINGS. That is what I was wondering. Yes; this is a caution. That is great.

The record will stay open for any questions from the other colleagues that are at that other hearing now. And we appreciate your appearance here today and the work you are doing. OK?

Senator RUDMAN. Thank you very much.

Mr. FORBES. Thank you very much.

[The following questions were not asked at the hearing, but were submitted to the Board for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

Mr. Forbes, in your statement you say that since the jamming ceased, RFE/RL have become the radio stations of first choice throughout the Eastern Bloc. The usual perception is that BBC is the most listened to international service.

Question:

What do you include in your broadcasts that makes you the dominant international broadcaster in this region?

Answer:

Radio Free Europe and Radio Liberty are full service surrogate radio stations that are primarily engaged in transmitting news and information that is directly relevant to listeners in the countries to which they broadcast. Other international radios, such as VOA, BBC, Deutsche Welle, etc., are official government stations that mainly transmit information about the countries and governments they represent.

Increasingly, RFE/RL's news is developed by direct telephone and postal contact with official and unofficial sources inside the countries to which it broadcasts. In addition, journalists from the radios regularly interview visitors from Eastern Europe and the Soviet Union, many of whom make it a point to visit the Munich station when in the West. RFE/RL's research staff receives and evaluates hundreds of official and samizdat publications from the broadcast area each month. Through these and other sources the radios can and do broadcast news and information that official Communist media either ignore or do not treat fully. The radios thus play a unique and significant role in leading the public discussion in their target countries in directions that further democratic ideals and respect for human rights.

Question:

How has glasnost and perestroika altered your programming?

Answer:

The principal consequence of glasnost for RFE and RL programming has been that the radios are able to maintain an unprecedented level of direct contact with their audience. Programmers therefore have a much better idea of what their audiences like and do not like, leading to countless program refinements.

In those countries where domestic media have experienced a pronounced expansion of glasnost, such as the Soviet Union, Poland and Hungary, RFE/RL finds itself in direct and intense competition. By closely monitoring the flood of information from these areas, however, the radios are able to fill many gaps and expose the still frequent attempts to conceal information. Glasnost should not be confused with the Western concept of freedom of the press, and the radios remain a significant means through which fragments of information are verified and put into proper perspective. Also, information that appears in small-circulation publications, such as Moscow News, is spread across all of the Soviet Union and Eastern Europe by RFE/RL.

Speed of response to developments in our target areas is, of course, essential in the era of glasnost, and our programmers have responded well to this challenge. On the evening of April 9, 1989, for example, a live program on the demonstrations in the Soviet Georgian Republic was broadcast by RL's Russian Broadcasting Department. The RL studio was equipped with a television set tuned to the Soviet Union's most important TV news program, Vremya, permitting RL's Russian moderator to point out to his audience that 15 minutes into the program Vremya had made no mention of the tragic developments in Georgia. When Vremya eventually carried the story, it was an uninformative TASS bulletin that did not convey the seriousness of the situation. This contrasted with RL's own program, which included among its interviews an eyewitness description of the arrest of a leading Georgian nationalist as well as first-person accounts of the turmoil in the streets.

Question:

As you indicate in your statement, the Radios are the principal U. S. Government program specifically aimed at encouraging peaceful change inside the Soviet Union and Eastern Europe. During the trips of President Reagan and Secretary Shultz to Russia, and their Russian counterparts to America, last year, was there any pulling back in the content of the broadcasts?

Answer:

RFE/RL does not compromise its policy of delivering complete and accurate information regardless of the nature of the event or the identity of the protagonists. There was, therefore, no "pulling back" in the content of RFE/RL's broadcasts during the exchange of visits by the American and Soviet leaders. On the contrary, during events of this or comparable significance the radios routinely expand coverage and the number of original program hours. This was done in the instances cited.

Question:

You mention that the Radio Liberty Russian Service interviewed Boris Yeltsin. If that means that Radio

Liberty has people on the ground in Russian then we have come a long way. Do you have correspondents in Russia?

Answer:

RFE/RL has not recruited correspondents inside the USSR, but we now have free-lance contributors, both regular and occasional, in major cities throughout the Soviet Union who prepare news reports or press reviews for broadcast from Munich. We regularly ask them to arrange or conduct interviews with newsmakers from the Baltic to the Caucasus, from Moldavia to Siberia. Since Western correspondents based in Moscow are often prohibited from traveling to these areas, we are frequently the first to obtain eyewitness reports from the spot. For the most part, these contributors are independent journalists working for samizdat publications.

ISRAEL RADIO STATION

You say that construction of the new station is estimated to cost $274,000,000. When you add the $16,000,000 that VOA put into the project in 1988 your back to the original total estimate of $300,000,000.

Question:

However, you say that the cessation of jamming has allowed you to eliminate 6 antennas from the plans. Shouldn't there be some savings due to the reduction in antennas?

Answer:

The orginial total estimated cost for the project was $310 million (which included the $16,000,000 that VOA provided directly to the Government of Israel). The current total estimated cost for the project is $290,000,000 (which includes the $16,000,000 from the VOA to the Government of Israel). This current estimate reflects a savings of $20 million largely due to the ten eliminated curtain antennas (six from RFE/RL and four from VOA).

Question:

Do you really need the full $207,233,000 in fiscal 1990? If the full amount is needed for the construction contract, can't the administrative costs be funded annually?

Answer:

Of the $207 million requested for FY 1990, administrative costs are estimated at $9.6 million. Only $2.6 million will be obligated in FY 1990 and the remaining $7 million may be deferred until FY 1991. The entire amount requested for construction cost, $197.4 million, is necessary in order to award the Broadcast System contract on schedule, prevent a one to two year delay in the completion of the project, and avoid an increase in cost of tens of millions of dollars.

Question:

What are the annual rental payments for the Project Office in Arlington, How much square feet is leased, and how many employees are in this Office?

Answer:

The project office in Arlington, International Broadcast Systems, Inc. (IBS), has a five year lease with the first 547 days, beginning May 15, 1988, being rent free. On the 548th day an annual rent of approximately $173,000 for 7,691 sq. ft. of space begins. Seventeen IBS employees and two BIB employees occupy this space. In addition, the TOMER employees occupy a small portion of this space when they are in the U.S. on official travel from Israel.

Question:

What will be the annual operating costs of the station?

Answer:

The projected annual operating expenses for the initial five years is $12 million. This amount covers operations and maintenance services and includes an estimate for electrical power and satellite transmission. Thereafter, costs are subject to yearly review with final approval authority vested in the United States Information Agency and the Board for International Broadcasting (USBE).

INSPECTOR GENERAL

The Board's request includes $163,726 for a two-person Inspector General Office that will be established in April 1989. This is being done pursuant to the Inspector General Act amendments of 1988.

Question:

Does not the Board have RFE/RL audited each year by a certified public accounting firm such as the report by

Deloitte Haskins & Sells that is printed in the Board's 1989 Annual Report?

Answer:

Yes, the contract for the audit of the financial statements of RFE/RL and IBS was awarded to Deloitte, Haskins & Sells in FY 1988. In addition, BIB's administrative expenses are audited by GSA's Office of Inspector General under the terms of a reimbursable Memorandum of Agreement.

Question:

How much does the CPA audit cost the Board?

Answer:

In FY 1989, the estimated cost of the audit of RFE/RL's financial statements is $116,200.

Question:

GAO also audits the Board and RFE/RL. In the opinion of the Board is there sufficient activity to warrant an Inspector General?

Answer:

At the present time, BIB's program oversight activities plus the annual financial audit of RFE/RL and of BIB's administrative expenses appear to be redundant with the activities of an Inspector General.

Question:

Was the Board consulted prior to your being designated as a federal entity requiring an Inspector General?

Answer:

The Board was not officially consulted prior to its designation as a federal entity requiring an Inspector General.

Question:

Has someone been appointed as Inspector General?

Answer:

BIB has established this new position and is currently recruiting for an Inspector General.

EXCHANGE RATES

Question:

The 1990 request is based on Exchange Rates of 1.7 West Germany Marks, 143.87 Portuguese Escudos, and 112.65 Spanish Pesetos to the dollar. What are the current Exchange Rates?

Answer:

The current exchange rates are 1.87 West German marks, 153.45 Portuguese escudos, and 115.85 Spanish pesetas to the dollar.

Question:

The justifications indicate that BIB will have Exchange Rate gains of $18,000,000 in fiscal 1989. Is that still your estimate?

Answer:

If current exchange rates prevail during FY 1990, BIB will have a foreign currency gain of approximately $17 million.

Question:

Did BIB realize any gains in fiscal 1988, and if so, what happened to them?

Answer:

In FY 1988, BIB experienced a foreign currency loss of $18.9 million; no gains were realized.

U.S. INFORMATION AGENCY

STATEMENT OF MARVIN L. STONE, ACTING DIRECTOR

ACCOMPANIED BY:

RICHARD W. CARLSON, ASSOCIATE DIRECTOR, VOICE OF AMERICA
HENRY HOCKEIMER, ASSOCIATE DIRECTOR FOR MANAGEMENT
ERNESTO BETANCOURT, DIRECTOR, RADIO MARTI
STANLEY SILVERMAN, BUDGET OFFICER
VICTOR LI, PRESIDENT, EAST-WEST CENTER

BUDGET REQUEST

Senator HOLLINGS. We will now hear the requests of the U.S. Information Agency. For fiscal year 1990 USIA is requesting a total of $949,245,000, an increase of $66 million.

We no longer have Mr. Charlie Wick. He left a real imprint on the agency, did an outstanding job bringing us Worldnet, modernization of the Voice of America, RIAS TV and Radio Marti, and he supported TV Marti. Right Mr. Stone?

Mr. STONE. Yes; he did.

Senator HOLLINGS. I met Mr. Gelb and understand he now supports TV Marti, but we will get in and hear from you on that score. The Committee on Foreign Relations had a hearing on Mr. Gelb's nomination last week, and I am confident he will be confirmed without any trouble. Today we have very gladly, the Acting Director, Marvin L. Stone, accompanied by Richard Carlson, the head of Voice of America, with Henry Hockeimer, the Associate Director of Management; Ernesto Betancourt, Director of Radio Marti, and Stanley Silverman, the budget officer. I also want to acknowledge the presence of Dr. Victor Li, the president of the East-West Center and note that Senator Inouye is chairing a hearing of the Defense Appropriations Subcommittee.

Mr. Stone, I have watched Mr. Silverman over the years. I think he is really the dean of the Federal budget officers, and he has done an outstanding job. We rely on him as a source of solid advice in working out our USIA programs.

I just wanted to note that fact here in the record. If there are no further opening statements, we would be delighted to hear from you just now.

Mr. STONE. Thank you, Mr. Chairman. Mr. Wick is in town, and I will be happy to pass along those nice words of praise from you, and I know he will appreciate it.

OPENING STATEMENT

I am pleased to be here today. I would like to be able to take just a few minutes to read my opening statement. It is sort of an overview of an agency that is involved in over 120 countries, and over

200 posts, and I will try to do justice to it, as I have seen it over the past 4 years in any case.

We are asking for—our request totals $949 million. I would like to round these numbers out. With the strong support of this committee, our Agency experienced a period of revitalization in the 1980's, the early 1980's, as you mentioned. As a result, the Agency was able to rise capably to the public diplomacy challenges that confronted all of us during those years, including the impact of Gorbachev on the global stage.

Through new communications technology and expanded cultural exchanges, the Agency achieved major successes, and in doing so, demonstrated how vital public diplomacy can be to our foreign policy. For the past 3 years, however, we have seen the expanding budget undergo a significant belt tightening, and the budget request that I will now outline continues in this direction.

BUDGET REQUEST

The 1990 request consists of $655 million for salaries and expenses; $153 million for educational and cultural exchange programs; $12.7 million for radio broadcasting in Cuba; $3.7 million for the new inspector general appropriation which is taken from salaries and expenses; $20 million for the East-West Center in Hawaii; $15.8 million for the National Endowment for Democracy; and $89 million for VOA modernization under radio construction.

These total $949 million, and even though the sum represents an almost $67 million increase over fiscal year 1989 appropriations, our program operations will be further reduced. Please let me explain.

A total increase of $48.1 million pertains to changes in interagency cost allocations and in construction needs and does not affect program operations. Thus, some $24.1 million of the $66.9 million will cover various administrative support activities for our overseas projects, which were previously financed from appropriations through the Department of State.

The Department's budget has been lowered commensurately. Another $24 million of the increase will be used to continue the work on the two new VOA relay stations in Morocco and Thailand and the lease payments for new transmitters in West Germany, the focus of our streamlined modernization program.

The stations in Morocco and Thailand, which should be completed by 1992 and 1993 respectively, will greatly enhance our broadcasting capabilities. The balance of the change will address the following: $31 million is required to meet inflation and other built-in costs of our work here and around the world; some $4.6 million is needed for U.S. representation at the Seville Expo in 1992. I would like to say more about Seville in a few moments.

In order to accommodate these requirements, the Agency will have to make reductions totaling $16.8 million. While these are still under discussion, our current thinking is they will include the following: A significant reduction in original program by our television and film service, giving that service the largest percentage of cuts in 1990; the replacement of the Voice of America's Greek and Turkish language broadcasting services with daily feed services, reducing thusly their broadcast schedule by 10½ hours weekly; the closing of the Voice of America's broadcast relay stations at Quesada and on Antigua—signals from other relay points will make up some of this loss; a reduction in support and staff for overseas library and exchange programs; the elimination of 193 further positions throughout the Agency; and finally, other reductions include closing three more posts overseas as well as curtailment of certain mission programs and support activities.

These anticipated program reductions follow program cuts between 1987 and 1989 totaling $72.2 million in the salaries and expenses appropriation alone. While all Agency activities were affected, the greatest percentage reductions were applied to domestic operations in order to maintain our field activities to the maximum extent possible.

We understand that tight budgets are likely to be the rule in the near term, and we will continue to do the most we can with limited resources. We hope to be able to capitalize on the numerous program initiatives we have begun in the past few years.

Some of these, such as the worldwide satellite delivery system, will help us deal with shrinking budgets. We will continue to pursue vigorously the modernization of the highest priority VOA relay stations. We will continue an increased level of exchanges with the Soviet Union and Eastern Europe, where we have possibilities today that we have never had before.

We will also continue our strong support of television broadcasting to Cuba. USIA, acting in close consultation with an interagency coordinating task force, is moving to develop and test a television facility capable of reaching Cuba with a quality signal. The initial approach involves an aerostat tethered on U.S. soil on Cudjoe Key, FL.

A total of $7.5 million was made available for this purpose in our 1989 appropriation, funds having been earmarked in the VOA modernization account.

We are currently negotiating with OMB to formulate a budget amendment for 1990 for TV Marti as part of the review of foreign affairs funding that was mentioned in President Bush's budgetary presentation in February. I would now like to describe briefly some of the specific activities and programs we are currently undertaking.

USIA PROGRAMS

Educational and cultural exchange programs are part of the Agency's mission. The best known of these exchanges is the Fulbright Program. More than 40 years after its founding, it continues to provide unique opportunities for students and scholars from the United States and around the world to study, teach, and learn about each other's cultures.

USIA's International Visitor Program, as well as others, brings foreign leaders to this country for intensive professional and cultural orientation.

The 1980's have demonstrated that television is a vital and powerful part of our public diplomacy. On every continent, research shows that television, because of its immediacy and effectiveness, is rapidly becoming the primary source of information for most of the world's people.

In fiscal year 1989, we will have added full time, 24-hour satellite transponder service to the Western Pacific and American republic areas. This transmission network serves the entire Agency and could have significant cost-effective side benefits. Its capacities are being developed to provide for the transmission of other USIA informational materials, including VOA placement services; multiple languages for Worldnet interactive programs; our wireless file text and library research facsimile services.

We are eager to support our field operations by resuming transmission of appropriate, noninteractive programs which were suspended at the end of fiscal year 1988. At that time, as you know, our passive programming was taken off the air by mandate of Congress.

At this point, we have submitted legislation to the Congress that would enable us to take full advantage of the TVRO satellite delivery system which is already in place. Our Embassies throughout the world, especially in Africa, Asia, and Latin America, have expressed their deep concern over the loss of what has become one of their most important program tools.

As for the Voice of America, it is in its 47th year of broadcasting with a weekly audience of about 127 million regular listeners. For many of them, the voice remains the primary source of accurate, complete news about the United States and the world.

VOA's Radio Marti Program to Cuba, now broadcasting for the first time 24 hours a day, has been without question a tremendous success. A 1988 evaluation done by an independent consultant concluded, and I quote, "There can be little doubt that Radio Marti is following its congressional mandate. It is providing invaluable service to the people of Cuba by giving them a more complete and accurate picture of the world events and an array of entertainment to make life more enjoyable."

I will skip over and not read in the record the part on our relations with the Soviets, which are moving along. We have had a number of meetings with them face to face on information and exchanges.

SEVILLE EXPO

As I mentioned earlier, our fiscal year 1990 budget includes funds for a share of the costs of U.S. representation in the Columbus Quincentennial Exposition in Seville in 1992. Participation in Seville is important to several U.S. interests. It will demonstrate to Spain the importance we attach to bilateral relations and will remind Europe that we have a binding past and future, and primarily, it will demonstrate United States competitiveness through a vigorous promotion of United States travel, tourism, and trade, which is something new in our presentations of international exhibitions overseas.

One-half of the approximately $30 million cost of U.S. participation in the Seville Expo and related 1992 Columbus events is expected to be met through non-Federal sources. The other $15 million will be borne equally by USIA, the State Department, and the

Department of Commerce, with funds earmarked from each agency's fiscal year 1990 budget.

In conclusion, Mr. Chairman, we should all be reminded that the information revolution has magnified the influence of public opinion around the world and America's public diplomacy consequently has become increasingly important. The USIA still needs to modernize aging equipment, acquire advanced communication technologies, and widen the reach of international educational, cultural, and people-to-people programs.

PREPARED STATEMENT

While we understand the government-wide need to tighten our belts, we cannot afford to let our capabilities erode. This is an important time for the USIA. We must be able to reach those countries looking for new ideas and remind them of America's story. We must reach more people still trapped by repressive governments with this country's message of truth and hope. I believe our own future depends on it. Thank you, sir. I will be pleased to answer any questions you may have.

[The statement follows:]

Statement of Marvin L. Stone

Mr. Chairman, Members of the Subcommittee: I am pleased to appear before you today to present the United States Information Agency's appropriation request for fiscal year 1990. Our 1990 budget request totals $949.2 million.

With the strong support of this committee, USIA experienced a period of revitalization in the early 1980's.

As a result, the Agency was able to rise capably to the public diplomacy challenges that confronted our Nation during those years, including the impact of Mikhail Gorbachev on the global stage.

Through new communications technology and expanded cultural exchanges, the Agency achieved major successes, and in doing so demonstrated how vital public diplomacy can be to our foreign policy.

For the past 3 years, however, what had been an expanding budget, has undergone a significant belt-tightening. The budget request that I will now outline continues in this direction.

The 1990 request consists of $655,068,000 for Salaries and Expenses, $153 million for Educational and Cultural Exchange Programs, $12,700,000 for Radio Broadcasting to Cuba, $3,677,000 for the new Inspector General appropriation (taken from Salaries and Expenses), $20 million for the East-West Center in Hawaii, $15,800,000 for the National Endowment for Democracy, and $89 million for VOA modernization under Radio Construction.

These total $949,245,000 and, even though the sum represents a $66,883,000 increase over fiscal year 1989 appropriations, our program operations will be further reduced. Let me explain.

—A total increase of $48.1 million pertains to changes in inter-agency cost allocation and in construction needs and does not affect program operations. Thus, some $24.1 million of the $66.9 million will cover various administrative support activities for our overseas posts which were previously financed from appropriations to the Department of State. The Department's budget has been lowered commensurately.

Another $24 million of the increase will be used to continue work on the two new VOA relay stations in Morocco and Thailand and lease payments for new transmitters in West Germany, the focus of our streamlined modernization program. The stations in Morocco and Thailand, which should be completed by 1992 and 1993 respectively, will greatly enhance our broadcasting capability. The balance of the change will address the following:

—Thirty-one million dollars is required to meet inflation and other built-in costs of our work here and around the world.

—Some $4.6 million is needed for U.S. representation at the Seville Expo of 1992. I will say more about Seville in a few moments.

In order to accommodate these requirements, the Agency will have to make reductions totaling $16.8 million. While these are still under discussion, our current thinking is that they will include the following:

—A significant reduction in original programming by our Television and Film Service, giving that service the largest percentage cut in funds in 1990;

—The replacement of the Voice of America's Greek and Turkish language broadcasting services with daily feed services, thus reducing the broadcast schedule by 10½ hours weekly;

—The closing of the Voice of America's broadcast relay stations at Quesada and on Antigua (signals from other relay points will make up some of this loss);

—The reduction in support and staff for overseas library and exchange programs;

—The elimination of 193 positions throughout the Agency;

—Finally, other reductions include the closing of 3 of our posts overseas, as well as curtailment of certain mission programs and support activities.

These anticipated reductions follow program cuts between 1987 and 1989 totaling $72.2 million in the Salaries and Expenses appropriation alone. While all Agency activities were affected, the greatest percentage reductions were applied to domestic operations in order to maintain our field activities to the maximum extent possible.

We understand that tight budgets are likely to be the rule in the near term, and we will continue to do the most we can with limited resources.

We hope to be able to capitalize on the numerous program initiatives we have begun in the past few years. Some of these, such as the worldwide satellite delivery system, will help us deal with shrinking budgets.

We will continue to pursue vigorously the modernization of the highest priority VOA relay stations.

We will continue an increased level of exchanges with the Soviet Union and Eastern Europe.

We also will continue our strong support of television broadcasting to Cuba. USIA, acting in close consultation with an inter-agency coordinating task force, is moving to develop and test a television facility capable of reaching Cuba with a quality signal. The initial approach involves an aerostat tethered on U.S. soil at Cudjoe Key, Florida.

A total of $7.5 million was made available for this purpose in our 1989 appropriation, the funds having been earmarked in the VOA modernization account. The budget before you does not contain any new funding for this project in 1990. We are currently negotiating with OMB to formulate a budget amendment for 1990 for TV Marti as part of the review of foreign affairs funding that was mentioned in President Bush's budget presentation in February.

I would now like to describe briefly some of the specific activities and programs USIA is currently undertaking.

Educational and cultural exchange programs are at the heart of this Agency's mission. The best known of these exchanges, the Fulbright program, more than 40 years after its founding, continues to provide unique opportunities for students and scholars from the United States and around the world to study, teach and learn about each other's cultures. USIA's International Visitor program as well as others, brings foreign leaders to this country for intensive professional and cultural orientation.

The 1980's have demonstrated that television is a vital and powerful part of our public diplomacy. On every continent, research shows that television—because of its immediacy and effectiveness—is rapidly becoming a primary source of information for most of the world's people.

In fiscal year 1989, we will have added full-time 24-hour satellite transponder service to the Western Pacific and American Republic areas. This transmission network serves the entire Agency and could have significant, cost-effective side benefits. Its capacities are being developed to provide for the transmission of other USIA informational materials, including VOA placement services, multiple languages for WORLDNET interactive programs, Wireless File text, and library research facsimile services.

We are eager to support our field operations by resuming transmission of appropriate non-interactive programs which were suspended at the end of fiscal year 1988. At that time, as you know, our passive programming was taken off the air by mandate of Congress.

At this point, we have submitted legislation to the Congress that would enable us to take full advantage of the TVRO satellite delivery system which is already in place.

Our embassies throughout the world—especially in Africa, Asia and Latin America—have expressed their deep concern over the loss of what had become one of their most important program tools.

In its 47th year of broadcasting, the Voice of America has a weekly audience of about 127 million regular listeners. For many of them the Voice remains their primary source of accurate, complete news about the United States and the world. We estimate that VOA coverage of President Bush's inauguration reached more than 162 million listeners worldwide.

VOA's Radio Marti Program to Cuba, now broadcasting 24 hours a day, has been, without question, a tremendous success. A 1988 evaluation done by an independent consultant concluded: "There can be little doubt that Radio Marti is following its Congressional mandate. It is providing invaluable service to the people of Cuba by giving them a more complete and accurate picture of world events and an array of entertainment to make life more enjoyable."

In the months ahead we also look forward to continuing our high-level talks with the Soviet Union on a wide range of information issues. Last April, government, media and cultural officials from both countries met in Washington to discuss improving the flow of information. It was the first time the two countries agreed to hold discussions of this nature.

The second set of bilateral talks took place in Moscow in late September. Important U.S. concerns were raised including the need for greater media reciprocity, better access to Soviet media by U.S. officials, as well as the problem of continued Soviet disinformation.

We also anticipate a greater unfolding of our cultural and people-to-people relationship with the Soviet Union in the months ahead. This important initiative offers not only the possibility of increased understanding, but also a useful means to help us judge the measure of Soviet glasnost.

As I mentioned earlier, our fiscal year 1990 budget includes funds for a share of the costs of U.S. representation in the Columbus Quincentennial Exposition in Seville, Spain in 1992. Participation in the Seville expo is important to serve several U.S. interests. It will demonstrate to Spain the importance we attach to our bilateral relations. It will remind Europe that we have a binding past and future. Primarily, it will demonstrate U.S. competitiveness through vigorous promotion of U.S. travel, tourism and trade—something new in our presentations overseas.

Half of the approximately $30 million cost of U.S. participation in the Seville Expo and related events is expected to be met through non-Federal sources. The other $15 million will be borne equally by USIA, the State Department and the Department of Commerce, through funds earmarked in each agency's fiscal year 1990 budget.

In conclusion, Mr. Chairman, we should all be reminded that the information revolution has magnified the influence of public opinion around the world—and America's public diplomacy consequently has become increasingly important.

USIA still needs to modernize aging equipment, acquire advanced communication technologies, and widen the reach of international educational, cultural and people-to-people programs. While we understand the government-wide need to tighten our belts, we cannot afford to let our capabilities erode.

This is an important era for USIA. We must be able to reach those countries looking for new ideas and remind them of America's story.

And we must reach more people still trapped by repressive governments—with this country's message of truth and hope.

Our own future depends on it.

Thank you. I will be pleased to answer any questions you have.

TV MARTI

Senator HOLLINGS. Thank you, sir. It is interesting that we are expressing our interest in Spain by giving them a $1 billion facility at Torrejon, as well as Seville.

I have some materials for insertion in the record regarding TV Marti.

On February 8, 1989, I introduced S. 375 which provides authorization for TV Marti. In addition to myself there are now 20 cosponsors of the bill. After encountering some hesitancy from the Bush administration, I now have letters of endorsement from the Director-designate, Bruce Gelb, and Dick Darman, the Director of OMB, which will be made part of the record.

[The information follows:]

LETTERS FROM RICHARD G. DARMAN, DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET, EXECUTIVE OFFICE OF THE PRESIDENT

MARCH 20, 1989.

Hon. ERNEST F. HOLLINGS,
Senate Appropriations Committee Chairman, Subcommittee on Commerce, Justice, State, the Judiciary, S-146A U.S. Capitol, Washington, DC

DEAR MR. CHAIRMAN: The Administration will transmit its proposed authorization bill for the United States Information Agency (USIA) to Congress today. The Administration's bill contains language earmarking $16 million in fiscal year 1990 and $16 million in fiscal year 1991 for TV Marti.

The International Operations Subcommittee of the House Committee on Foreign Affairs plans to markup the USIA authorization bill tomorrow. Informal discussions between the Administration and the Subcommittee apparently had not conveyed fully the Administration's strong commitment to funding TV Marti in both fiscal year 1990 and fiscal year 1991. As a result, the attached letters and draft language were sent last Friday to Subcommittee Chairman Dymally and to Congresswoman Snowe, the Subcommittee's Ranking Member.

I wanted you to be aware of these communications and of the Administration's strong commitment to TV Marti. Thank you for your interest.

With best regards,

RICHARD G. DARMAN,
Director.

Enclosures

MARCH 17, 1989.

Honorable MERVYN DYMALLY,
Chairman, Subcommittee on International Operations, U.S. House of Representatives, Washington, DC

DEAR MR. CHAIRMAN: The International Operations Subcommittee is scheduled to mark-up the U.S. Information Agency (USIA) authorization bill for fiscal year 1990–fiscal year 1991 next Tuesday. Although there have been informal discussions between the Subcommittee staff and the Administration regarding the Administration's USIA proposal, it is my understanding that these discussions have not reflected fully the Administration's strong commitment to funding TV Marti both in fiscal year 1990 and fiscal year 1991.

The Administration's proposed USIA authorization bill will be transmitted to the Committee on Monday. It will contain language earmarking $16 million in fiscal year 1990 and $16 million in fiscal year 1991 for TV Marti. I enclose, for your advance consideration, draft language necessary to implement the TV Marti provisions. Please let me assure you that we attach very high priority to the inclusion of these provisions. Our approach would not result in an increase in the total USIA budget request, but will be accommodated within the same resource levels as are in President Bush's February 9 budget proposals.

Thank you for your attention to the Administration's strong interest in TV Marti funding.

With best regards,

RICHARD G. DARMAN.

Enclosure

MARCH 17, 1989

Honorable OLYMPIA J. SNOWE,
Subcommittee on International Operations, U.S. House of Representatives, Washington, DC

DEAR MRS. SNOWE: The International Operations Subcommittee is scheduled to mark-up the U.S. Information Agency (USIA) authorization bill for fiscal year 1990–fiscal year 1991 next Tuesday. Although there have been informal discussions between the Subcommittee staff and the Administration regarding the Administration's USIA proposal, it is my understanding that these discussions have not reflected fully the Administration's strong commitment to funding TV Marti both in fiscal year 1990 and fiscal year 1991.

The Administration's proposed USIA authorization bill will be transmitted to the Committee on Monday. It will contain language earmarking $16 million in fiscal year 1990 and $16 million in fiscal year 1991 for TV Marti. I enclose, for your advance consideration, draft language necessary to implement the TV Marti provisions. Please let me assure you that we attach very high priority to the inclusion of these provisions. Our approach would not result in an increase in the total USIA budget request, but will be accommodated within the same resource levels as are in President Bush's February 9 budget proposals.

Thank you for your attention to the Administration's strong interest in TV Marti funding.

With best regards,

RICHARD G. DARMAN.

Enclosure

To authorize appropriations for fiscal years 1990 and 1991 for the United States Information Agency and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. * * *

AUTHORIZATION OF APPROPRIATIONS

Sec. 102. (a) For operating and special program accounts including "Salaries and Expenses," * * * and "National Endowment for Democracy," $860,245,000 for the fiscal year 1990 of which not less than $16,000,000 shall be available for "Television Broadcasting to Cuba," and such sums as may be necessary for the fiscal year 1991, including $16,000,000 for "Television Broadcasting to Cuba" contingent upon the successful completion of the test set out in Title V of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1989 (Public Law 100-459); * * *

SECTION 1. SHORT TITLE

This Act may be cited as the "Television Broadcasting to Cuba Act".

SEC. 2. FINDINGS: PURPOSES

The Congress finds and declares——

(1) that it is the policy of the United States to support the right of the people of Cuba to seek, receive, and impart information and ideas through any media and regardless of frontiers, in accordance with article 19 of the Universal Declaration of Human Rights;

(2) that consonant with this policy, television broadcasting to Cuba may be effective in furthering the open communication of accurate information and ideas to the people of Cuba, in particular, information about Cuba;

(3) that such broadcasting to Cuba, operated in a manner not inconsistent with the broad foreign policy of the United States and in accordance with high professional standards, would be in the national interest; and

(4) that the Voice of America already broadcasts to Cuba information that represents America, not any single segment of American society, and includes a balanced and comprehensive projection of significant American thought and institutions but that there is a need for television broadcasts to Cuba which provide news, commentary and other information about events in Cuba and elsewhere to promote the cause of freedom in Cuba.

SEC. 3. ADDITIONAL FUNCTIONS OF THE UNITED STATES INFORMATION AGENCY

(a) *TELEVISION BROADCASTING TO CUBA.*—In order to carry out the objectives set forth in section 2, the United States Information Agency (hereafter in this Act referred to as the "Agency") shall provide for the open communication of information and ideas through the use of television broadcasting to Cuba. Television broadcasting to Cuba shall serve as a consistently reliable and authoritative source of accurate, objective, and comprehensive news.

(b) *VOICE OF AMERICA STANDARDS.*—Television broadcasting in accordance with subsection (a) shall be in accordance with all Voice of America standards to ensure the broadcast of programs which are objective, accurate, balanced, and which present a variety of views.

(c) *USIA TELEVISION MARTI.*—Any program of United States Government television broadcasts to Cuba authorized by this section shall be designated "USIA Television Marti program".

SEC. 4. CUBA TELEVISION SERVICE OF THE UNITED STATES INFORMATION AGENCY

(a) *TELEVISION MARTI SERVICE.*—The Director of the United States Information Agency shall establish within the Agency a Television Marti Service (hereafter in this section referred to as the "Service"). The Service shall be responsible for all television broadcasts to Cuba authorized by section 3. The Director of the United States Information Agency shall appoint a head of the Service and shall employ such staff as the head of the Service may need to carry out his duties.

(b) *PRESIDENTIAL APPROVAL BASED ON TEST RESULTS.*—The broadcasting authorized hereunder shall not commence until the President has approved such commencement based upon an executive branch review and evaluation of the results of the 90-day test of television broadcasting to Cuba prescribed in Public Law 100-459.

(c) *USE OF EXISTING USIA FACILITIES.*—To assure consistency of presentation and efficiency of operations in conducting the activities authorized hereunder, the Service shall make maximum feasible utilization of Agency facilities and management support, including those of the Radio Marti Program, VOA and the USIA Television Service.

(d) *USE OF SPECTRUM.*—Notwithstanding any other provision of the Communications Act of 1934, as amended or the Administrative Procedure Act, the Federal Communications Commission shall have the authority to allocate by order the spectrum it determines to be the most practicable and efficient to further the national interests expressed by this Act. This spectrum will be assigned in accordance with Section 305 of the Communications Act.

(e) *INTERFERENCE WITH DOMESTIC TELEVISION BROADCASTING.*—Broadcasting by the Service shall be done in such a manner as to avoid direct interference with any domestic television broadcasting.

(f) *ADDITIONAL AUTHORITIES.*—The Agency may carry out the purposes of this part by means of grants, leases, or contracts (subject to the availability of appropriations) or such other means as the Agency determines will be most effective.

SEC. 5. AMENDMENTS TO THE RADIO BROADCASTING TO CUBA ACT

Section 5 of the Radio Broadcasting to Cuba Act (22 U.S.C. 1465c) is amended—

(1) in the heading of such section by inserting "and Television" after "Radio,"

(2) in the first sentence of subsection (a) by inserting "and Television" after "Radio," and

(3) in subsection (b) by inserting "and the Television Broadcasting to Cuba Act" after "Act".

SEC. 6. ASSISTANCE FROM OTHER GOVERNMENT AGENCIES

AUTHORITY.—In order to assist the United States Information Agency in carrying out the purposes set forth in section 2, any agency or instrumentality of the United States may sell, loan, lease, or grant property (including interests therein) and may perform administrative and technical support and services at the request of the Agency.

LETTER FROM BRUCE S. GELB, DIRECTOR-DESIGNATE, U.S. INFORMATION AGENCY

MARCH 14, 1989

Hon. ERNEST F. HOLLINGS,
United States Senate

DEAR SENATOR HOLLINGS: I appreciated the opportunity to meet you on Friday, March 3. I can assure you that we are very interested in seeing TV Marti come online. It has the potential to be a worthy parallel to Radio Marti which is playing such an important role in communicating to the Cuban peoples. The Agency will be working as rapidly as possible to complete the various tests necessary before we can convert this dream into a reality. Your support for the concept is very helpful.

Thank you again for your time and I look forward to the opportunity of having regular consultations with you and your colleagues on the Senate Appropriations Committee.

Sincerely,

BRUCE S. GELB,
Director-designate.

LETTER FROM RICHARD G. DARMAN

FEBRUARY 27, 1989.

Hon. ERNEST F. HOLLINGS,
Chairman, Subcommittee on Commerce, Justice, State, the Judiciary, United States Senate, Washington, DC

DEAR MR. CHAIRMAN: Thank you for your letter of January 4, 1989, regarding additional funding and authorization for TV Marti. I am aware of the success of Radio Marti, and the current interest in the concept of television broadcasting to Cuba.

I understand that the U.S. Information Agency's Voice of America (VOA) has been tasked with leading an interagency group to carry out the design and testing of a system for television broadcasting to Cuba as directed by Congress. According to VOA staff, a variety of complex technical problems are unresolved at present and a pilot test of the system cannot be conducted until these problems are overcome. A contract will be awarded shortly for design and testing of the aerostat option; according to the interagency group's plans, the system should be ready for the 90-day test by October of this year. The group is also preparing to award contracts that will develop other broadcast system options in the event that the aerostat option proves to be unsatisfactory.

You are correct about President Bush's interest. He has specifically directed us to support this initiative. I can assure you that we will carefully review the interagency group's findings with the new Director of USIA—with a view toward getting this program moving.

With best regards,

RICHARD G. DARMAN,
Director.

STATUS OF TV MARTI

Senator HOLLINGS. With respect to the TV Marti, where is that now? Can you tell the committee? We put up $7,500,000 to conduct an experiment. Can you tell us where it stands now?

Mr. STONE. Yes, sir; first of all, Mr. Gelb at his confirmation hearings on Friday, April 7, 1989, expressed his views on TV Marti. He feels that with the technology, there is promise of success. We will give the test results to the NSC, and they will evaluate it.

In addition to information the NSC is collecting on regulations, on the legality from other agencies, we know that President Bush is a supporter. The administration is a supporter. The Agency feels that anything that makes Castro uncomfortable makes us feel pretty good.

Senator HOLLINGS. And will they send up a budget amendment?

Mr. STONE. The $16 million that is being sought will come up as an amendment.

Senator HOLLINGS. In other words, I didn't want to take it out of the rest of your budget. USIA has many things to do right now.

Mr. STONE. Right now, we are going to be meeting with the OMB this Friday on whether they are going to make the Agency absorb the cost or not. We had hoped that this new venture would come out of money elsewhere or new money.

We have just signed the first of two contracts with General Electric. The second one should be signed by May 1, the major contract for the fabrication of the aerostat, the antenna which will go in it.

The tests should be completed by January 1990. The tests will go on for 3 months. First, of course, the fabrication has to be concluded. We hope that will be done by October, and then 3 months of tests, and we will know, then, whether it is going to fly.

Senator HOLLINGS. How do I deal with that during the year? I have got to make a determination budgetarily before October 1 for the next fiscal year. Am I going to be put off in saying, "Look, we are still testing; we don't know and we will let you know in January" and then request it next year and have nothing in for this year?

Mr. STONE. That is not the Agency's nor the administration's position.

Senator HOLLINGS. Good.

Mr. STONE. We can come up.

Senator HOLLINGS. Good. Let me yield to Senator Rudman.

Senator RUDMAN. Thank you, Mr. Chairman.

AEROSTAT RELIABILITY AND BACKUP

Mr. Stone, let me talk about TV Marti. You know, I generally haven't seen the facts on it but have supported it. But I have some concerns. First, the aerostat really is starting to look like it has got doubtful reliability. As you probably know, the one at Cudjoe Key went down into the water last week, probably due to a lightning strike.

There are a lot of technical people who don't think that it is necessarily that reliable. What do you do for a backup, or do you just go off the air if that happens? That is my first question.

Mr. STONE. The administration is looking into a backup with airplanes, and that is a part of the test which we have not accommodated at this point. The technical feasibility tests are going to be very elaborate, and there is down time. The Air Force has experienced that.

There is a feeling on the part of many that to be up 60 percent of the time is better than zero. There are some classified reports that are being weighed and will be sent to the NSC, but I don't think we are going to know. There are some complications on the technical side, no question about it.

Senator RUDMAN. We are going to look very closely at that, although I would agree with you that being up 60 percent of the time is better than not being up in terms of costs.

TV MARTI CHANNEL

The second question I have has to do with interference. There is discussion about use of a channel that is presently owned by someone in another part of Florida. Have you talked to those people about giving up their rights to that channel?

Mr. STONE. We have had some discussions with the FCC but I don't know how far we have gone in those discussions.

Senator RUDMAN. Has the owner of the station indicated that he is willing to make it available to TV Marti for some compensation?

Mr. CARLSON. He has not. Richard Carlson, Associate Director of the Voice of America. My understanding is that the owner, which I believe is a religious-based broadcaster in south Florida, has not yet made it known that he would be willing to sell the station. I understand he is going full steam ahead and has been for some months now.

Senator RUDMAN. Who is going full steam ahead?

Mr. CARLSON. The owner of that proposed station.

Senator RUDMAN. To go on that channel?

Mr. CARLSON. Yes, sir.

Senator RUDMAN. So if you don't have that channel available, then you have got another problem, don't you?

Mr. CARLSON. Yes, sir; we do.

CUBAN INTERFERENCE

Senator RUDMAN. That is my third point. I mean, am I right or wrong that if Castro decided, because a picture is worth 1,000 words, that he just didn't like TV Marti, he can put up a relatively low-cost antenna in Havana, broadcast whatever he wishes to on that, and essentially destroy TV Marti on that channel, for all intents and purposes. Is that right or wrong? That is not even jamming. That is just overcoming signals with other programming.

Mr. STONE. The only report I read on that, Senator, is classified. I will be happy to make——

Senator RUDMAN. There is nothing classified about what I am telling you. You talk about classification. Let me tell you something; you can pick up information at any Radio Shack, or you can pick up a magazine that will tell you about that. The fact is that broadcasting on a regular, commercial, low-power transmitter from Havana can blot out something coming in on TV Marti from someplace else.

I tell you something. With the budget crunch affecting this subcommittee, although I am a supporter of TV Marti, I am going to have to see hard, technical data before I am going to commit lots of money to this program. I just want everyone to know that.

Mr. STONE. The information that we are collecting at our Agency will be given to the NSC. They are collecting information from State, from Defense, and from other agencies. It is going to be an NSC decision whether to endorse the White House decision to go ahead, and it really is not a USIA decision.

Senator RUDMAN. All right. Fine. I am delighted to hear that, and with all due respect to the NSC, I think that we are going to have to get some very solid technical data.

SEVILLE EXPO POLICY

Second question. On Seville, which the chairman alluded to; I don't believe in a tit for a tat foreign policy all the time, but sometimes, you know, you have to send messages to people. What the Spanish did to us at Torrejon is classified. But I don't understand why we are running off to Seville as if this is so important to us and dumping $15 million of U.S. funds into a World's Fair at Seville on the heels of what they have recently done to us. They have caused major dislocations in some of our strategic planning.

Do you know why we have that policy or who came up with that policy?

Mr. **STONE**. That was an argument that—well, first of all, this country has never failed to participate in a universal World's Fair. There is one every decade. The last one was in Osaka. There has been none in the 1980's. It is an international exposition and universal fair.

Spain is an up and coming country in Europe, 38 million people and an expanding market. They will attract between 30 and 60 million people at this fair. We have a lot of interest from American corporations for the first time, and we are going to get $15 million from them. The Department of Commerce has an interest in promoting trade and tourism, which we are going to promote. The State Department has an interest in showing the Spanish, despite Torrejon, that we consider them a pretty important country. Taken together with 85 other countries that have already signed up on the quincentennial of Columbus' voyage to the New World, we think it would be pretty awkward for us not to be there, and for the first time, we are getting one-half the money from non-Federal sources. We are raising it right now.

Senator **RUDMAN**. Are we raising it?

Mr. **STONE**. We have been involved with 3½ million here, and 1½ million there. We have about eight States that want to come in with us, California and Texas, for example; a lot of interest in this. I don't see how we cannot be there.

Senator **RUDMAN**. And I take it you are raising the money privately and you expect you will raise it?

Mr. **STONE**. No doubt.

WORLDNET SATELLITE TRANSMISSION CONTRACT IN LATIN AMERICA

Senator **RUDMAN**. The last question I have is about the Worldnet situation in the Latin American service. I am going to kind of one-up the chairman here; I am going to turn this into a trade hearing.

You just awarded a sole source contract for transmission distribution down there to a company called Embratel. It is a telecommunications company owned by the Government of Brazil. They are going to subcontract with Intelsat and use their satellite transponders.

We have had a lot of trouble with the Government of Brazil. They just don't want to open their borders to American goods. We have had a lot of problems with dumping in this country from Brazil affecting the shoe industry in New England and in other parts of the country.

We now have a privately owned American company that has a satellite that provides telecommunication services to Latin America and to Europe. Senator Hollings has really taken a leadership position on this whole issue—and the company is PanAmSat—to break the monopoly held by Intelsat.

I wonder why we have done this on a sole source basis with a company that is owned by the Government of Brazil? Why don't we encourage private sector initiatives? Why don't we say, "No, we are going to give everyone a shot at this, including some private American telecommunication companies?" Why do we award this contract sole source to a wholly owned Government company in Brazil? I don't understand why.

Mr. **Stone**. I am going to turn this over to Bill Eames, who is Acting Director of our TV Service, but first, I would like to say that ordinarily, we do what you suggest we do.

Senator **Rudman**. I know you do. That is why I raised the question. It is rather unusual.

Mr. **Stone**. Bill, are there exceptional circumstances here?

Mr. **Eames**. There were exceptional circumstances, Senator, and I can——

Senator **Rudman**. Would you identify yourself for the stenographer?

Mr. **Eames**. I am Bill Eames, E-a-m-e-s, and I am Acting Director of Television for USIA.

We started in 1986 with a contract that was publicly sought, low bidder, and Embratel was given a contract for a 1-hour daily service to Latin America.

Then came the desire to increase that service to a 24-hour arrangement in 1988. In the meantime, PanAmSat had come into existence, and bidding was conducted among all the firms interested in this.

The viability of the PanAmSat signal was in question. The arrangements with the PTT's around Latin America which Embratel had conducted on behalf of the Agency were in place. They would all have had to have been renegotiated. The net result is that the contracting officers for the Government, for the U.S. Government and all others concerned, determined that the PanAmSat arrangement was, first of all, undependable, and second, not cost effective.

Therefore, the contract was renewed with Embratel.

Senator **Rudman**. There is one part of your answer which I don't understand. The technical aspects of it, we can check on that. That is a matter of opinion. How can you make the statement you just made when it was never competed?

Mr. **Eames**. Oh, but it was competed.

Senator **Rudman**. That is not our understanding. Our understanding is that the final decision was made here to award it sole source and that PanAmSat did not bid. See, you can't make a statement that it was competitive if it wasn't competed.

Mr. **Eames**. Well, it was evaluated by the contracting officer for the U.S. Information Agency, and it was determined that PanAmSat could not compete, was not in a position to compete.

Senator **Rudman**. With all due respect, I am sure there is more to this, and I am going to follow this up with you after the hearing, but I don't see how you make that judgment. I mean, if a contracting officer told a Senate Appropriations Subcommittee that, "We awarded a contract for new fighter aircraft to McDonnell because the contracting officer determined Lockheed couldn't compete," we would have somebody's head, I am going to tell you.

I mean, that is up to the private sector to determine. You know, you make your bid, you submit it, you receive it, and then open this to local bidders—either you did or you didn't.

So, I have a serious problem with that. Now, you know, it may be too late to do anything about it, but I really think that USIA ought to be very, very careful. I know that, as Mr. Stone states, this is not your general policy and we understand that.

We haven't had any problems with that, but this presents some very tough issues—and also politically, I might add, it is not good for USIA. A lot of people in this Congress are very concerned with the whole aspect of telecommunications trade. When you consider the technology we have, to make this award to this company—maybe it was the right thing to do, but there are a lot of serious questions about it.

So we can follow this up at a later time.

Mr. **Eames**. We will get you all the information you need.

Senator **Rudman**. This is not the last you are going to hear about it, I can assure you.

Mr. **Stone**. We will send you a separate file.

Senator **Rudman**. There is a trade issue, Mr. Chairman.

Senator **Hollings**. You got it. You are getting with the program.

USIA MOVE TO INTERNATIONAL CULTURAL AND TRADE CENTER

Mr. Stone, USIA spent $15 million modernizing the Voice of America in the Wilbur Cohen Building. Now you are going to spend another $30 million to go over to the trade center, and why?

Mr. **Stone**. Well, that is a long story. First of all, the ICTC Commission wants us there very badly, that is the Presidential Commission that will manage the International Cultural and Trade Center. Also, USIA is not adequately housed where it is now. We are in nine different locations around town. We feel that the synergism of bringing television, the Voice of America and the rest of the Agency together would be extremely beneficial to USIA, and our presence in the ICTC Building would also advance the cultural and trade objectives of the ICTC.

Yes; it will cost money to relocate the Voice. We believe we can salvage a good bit of the modernization undertaken to date—the consoles, other equipment, and the portable studios. We are concerned about some problems, no question, when you move a facility like that, but in the end, over the next 10 years, a lot of money can be saved by being consolidated. Our TV studios are in a building that is being condemned right now to be torn down. The Voice of America is in the Cohen Building which is a pre-World War II building that is scheduled for a full renovation by GSA. VOA is going to be disrupted as that building is totally remodeled. They are going to have to move much of their equipment and staff around inside that building. It is not much more costly or difficult to move it to another location across town.

We look at a move to the ICTC Building as a pretty good investment, both psychologically and financially for the USIA. The Justice Department has its fine headquarters building, and it has other units around town also; but what they want to do is cluster some of their other sub-units around this central Justice headquarters building. They are not consolidating into the headquarters building. They are just getting a little closer. We are trying to consolidate every part of our Agency into a single building.

Senator **Hollings**. The record will show we are in a pre-World War II building. [Laughter.]

Maybe that is what our trouble is. [Laughter.]

Senator RUDMAN. If anyone is interested, Mr. Chairman, if there are any historians in the group, I came across some interesting information. This was the original courtroom of the Supreme Court, and *Marbury* v. *Madison* was decided in this room.

Senator HOLLINGS. How do you like for a pre-World War II room, Mr. Smith?

Senator RUDMAN. A little history. I want to just add my comments about Director Wick, who we all believe did an extraordinary job with this agency. I don't know whether Mr. Gelb plays the piano or not, but if he doesn't, he had better learn.

NEW YORK SPACE

Senator HOLLINGS. Why are we budgeting $2 million for space in New York now, why so much space there?

Mr. STONE. Well, we have five separate operations there, including the Foreign Press Center. The general answer is they all serve very different purposes. The Foreign Press Center, similar to the one here in Washington, is an accommodation for the foreign press in the United States. We have the New York Reception Center, and have a warehouse in Brooklyn. We also have a small activity at Kennedy Airport's International Arrivals Building, an entirely different function which we couldn't bring into town.

Senator HOLLINGS. What are we doing with all of that in New York? Why not put it up in Manchester, NH, for example?

Mr. STONE. With all due respect to Manchester——[Laughter.]

Senator RUDMAN. Mr. Stone, you better be careful. You have done all right up to now. [Laughter.]

Mr. STONE. Well, the Brooklyn warehouse, for example, provides transshipment services for supplies and equipment for our posts overseas, plus books in English on many topics for the USIS libraries. The Voice of America news bureau is one of several—we have bureaus in other American cities. It pays particular attention to news from the United Nations for worldwide broadcasts.

The reception center programs several thousand international visitors yearly—over 4,000 in fiscal year 1988. We meet them at Kennedy Airport and help them through customs, introduce them to their escort, and show them to their hotel. We bring over some pretty important people throughout the year, sometimes through New Orleans or Miami, but generally through New York. Those arriving through other cities usually come to New York at some point in their visit.

We have looked at consolidation; we were going to consolidate the Voice of America bureaus with the Foreign Press Center, and it just was so much more expensive uptown than the space downtown that we just decided to leave it where it is. We are also looking into the possible consolidation of the Brooklyn warehouse and the one in Washington at a single new location.

EAST-WEST CENTER BUDGET ENHANCEMENT IN 1991

Senator HOLLINGS. Dr. Li, what about the East-West Center. You have asked for a $7 million increase. What does the East-West Center propose to do?

Dr. LI. That will be for fiscal year 1991, Senator.

Senator HOLLINGS. Not in 1990?

Dr. LI. Not in 1990.

Senator HOLLINGS. I see.

Dr. LI. The Asia Pacific region has just grown with explosive force over the last 10 to 20 years, and we are not ready as a country to deal with either the challenges or the opportunities.

For example, in 1987, Japan increased its purchases of foreign manufactured goods by 22 percent, which is quite impressive. Asia's sales of manufactured goods went up 60 percent; Europe's 27. American sales in Japan went up 0.1 percent. Japan has problems with barriers. It has to remove them. We have got our own in terms of our unfamiliarity with the region and lack of capacity to deal with it. It is in these areas that we would like to work, sir.

Senator HOLLINGS. They bought 22 percent of Hawaii. The East-West Center is about the only thing left they haven't bought in Hawaii.

Dr. LI. We don't have the information to operate in Japan, which, I think, is one of the important reasons why our sales to Japan are limited.

Senator HOLLINGS. Oh.

Dr. LI. Our negotiators can remove the legal barriers, but the cultural and other barriers we are not able to penetrate, and we need to do that. The type of activities we would—start is a Pacific economic outlook, a kind of medium-term forward looking radar to say, "What is happening out there? What are the issues that will come up in the next few years?" We have had extensive meetings with parliamentarians in the region, and this should be much more helpful, as well as some education programs with the United States.

In sum, Senator, we are trying to build all those mechanisms and forums, which exist in our relations with Europe, and that underruns all of our relations with Europe. The counterparts of those things are not available in Asia.

ADDITIONAL COMMITTEE QUESTIONS

Senator HOLLINGS. Very good. We thank you very much, Mr. Stone, Mr. Silverman, Mr. Hockeimer, Mr. Carlson, the whole group. We appreciate very much your appearance here, and that concludes our hearing for today, other than the questions we will leave for the record.

[The following questions were not asked at the hearing, but were submitted to the Agency for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

Modernization of VOA

QUESTION:

In 1983, VOA began an effort to modernize and expand its transmission facilities to replace antiquated and obsolete facilities, and to upgrade the capabilities of its global network. The 1990 budget request for $89 million will focus on Morocco, Thailand, and Germany.

Do you have for the record an overall plan displaying the modernization effort by year and by location?

ANSWER:

VOA has revised its original multi-year (1983-1988) $1.3 billion modernization program to reflect budget realities and new priorities. If the amounts contained in our request for 1990 and the outyears (1991-1994) are appropriated, we currently estimate VOA will likely receive about half the funding needed to complete the original plan.

After careful research and analysis, VOA has devised a plan to maximize the resources we now have available and expect to receive in the future. Our plan includes:

--Completing the Morocco and Thailand stations as soon as possible;
--Utilization of the joint BIB project in Israel to improve VOA's signal to the USSR, Eastern Europe, Africa, and the Middle East;
--Leasing four new high-powered short-wave transmitters from the West German facility in Wertachtal, Bavaria, for broadcast coverage of Eastern Europe, the Soviet Union, Northern Africa and the Middle East;
--Exploring new, low-cost approaches to fill coverage gaps. This could include using medium wave transmitters on hand and other resources to fill pressing needs elsewhere;
--Implementation of the Satellite Interconnect System;
--Refurbishing existing facilities with special attention to coverage of areas left untouched by the new stations;
--Aggressively pursuing time-sharing with other international broadcasters;

--Developing a worldwide network of local stations relaying VOA programs and examining leasing possibilities.

The attached chart displays VOA modernization effort by year and by location (Attachment A).

ATTACHMENT A

RADIO CONSTRUCTION
FY 1990 USIA REQUEST TO CONGRESS - 6 YEAR PROJECTION

Items	FY-89 EST. OBLIGATIONS	FY-90 NOA Request	FY-91 NOA Request	FY-92 NOA Request	FY-93 NOA Request	FY-94 NOA Request
Morocco						
Land Rental	1,480,890	1,640,000	1,722,000	1,898,000	0	0
Commercial Power	0	0	0	0	0	0
Commercial Water	0	0	0	0	0	0
R.F. Subsystem	11,644,671	0	0	0	0	0
Antenna Subsystem	11,733,000	32,196,000	0	0	0	0
ACCR	0	4,130,000	0	0	0	0
Network Control	0	1,284,000	0	0	0	0
SIS	0	888,000	0	0	0	0
Facility Construction	0	0	0	0	0	0
Technical Support	802,000	482,000	1,027,000	196,000	0	0
Construction Support Services and Contingencies	5,103,834	5,723,000	13,745,000	8,953,750	0	0
	30,785,395 *	46,343,000	16,494,000	11,047,750	0	0
Thailand						
Commercial Power	3,830,000	0	0	0	0	0
Commercial Water	0	840,000	0	0	0	0
Microwave Telephone	745,000	0	0	0	0	0
R.F. Subsystem	18,463,000	0	13,616,000	0	0	0
Antenna Subsystem	0	0	44,952,000	0	0	0
ACCR	0	0	3,490,000	0	0	0
Network Control	0	0	1,333,000	0	0	0
SIS	0	0	810,000	0	0	0
Facility Construction	0	24,000,000	0	0	0	0
Technical Support	0	0	370,000	1,139,000	0	0
Construction Support Services and Contingencies	600,772	100,000	3,229,000	7,729,047	0	0
	23,638,772	24,940,000	68,006,000	8,868,047	0	0
Wertachtal	9,101,343	11,820,000	11,900,000	11,900,000	11,900,000	11,810,800
Systems Analysis & Design	962,148	600,000	600,000	600,000	600,000	600,000
Maintenance & Repair	8,913,515	5,000,000	5,000,000	30,084,203	8,300,000	6,589,200
	73,421,173	88,703,000	102,000,000	62,500,000	20,800,000	19,000,000
Other	8,320,000	297,000	0	0	0	0
	81,741,173	89,000,000	102,000,000	62,500,000	20,800,000	19,000,000

* Includes estimated Value Added Tax (VAT) from Government of Morocco ($1,250,000).

QUESTION

How far along in Morocco, Thailand, and Germany will we be with the $89 million requested for 1990?

ANSWER:

The FY 1990 budget request would allow VOA to make substantial progress on Morocco and Thailand and continue the lease payments in Germany.

> Morocco - Fabrication and installation of antennas, audio communications control room (ACCR) subsystem, and the satellite interconnect system. With the exception of technical support for system integration, all major subsystem contracts would be funded.
>
> Thailand - Facility construction, procurement of commercial water, and site maintenance. The fabrication and installation of antennas, audio communications control room (ACCR) subsystem, and the satellite interconnect system are scheduled for FY 1991.
>
> Wertachtal, Germany - Annual lease payments for four 500 kilowatt transmitters and antennas. (The last two of these new transmitters are scheduled to become operational in the third quarter of FY 1989.)

QUESTION:

The authorization bill approved by the House Foreign Affairs Committee authorizes only $65 million for 1990. Where would you reduce the request by $24 million?

ANSWER:

With an appropriation of $65 million in FY 1990, VOA would have to postpone the award of the major facility construction contract in Thailand. This action would increase the cost of the total project by about $6 million due to added inflation, the necessity of storing the RF subsystem components that were purchased in 1989, additional costs due to postponement of the antenna subsystem contract, and delay in other subsystems such as audio communication and control, the satellite interface system, and the network control system. The on-air date would be delayed by 12 to 18 months.

In its Statement of Administration Policy on the 1990/91 authorization bill, the Administration urged restoration of the $24 million requested to allow the Morocco and Thailand projects to proceed in a timely fashion.

QUESTION:

What contingencies are in the master plan to take into account the unstable political situation in countries housing VOA facilities?

ANSWER:

VOA is currently dependent on each of its foreign shortwave stations. Loss of any station would result in reduced language coverage. Our current plans concentrate on providing essential broadcast coverage and needed facilities renovation. The satellite interconnect system, when completed, will give us some capacity to compensate for loss of a station by allowing us to switch programs between stations. We will also continue modernizing our domestic relay stations to provide the highest quality primary and backup coverage.

QUESTION:

Mr. Stone, in your statement you say that "the 1980's have demonstrated that TV is a vital and powerful part of our public diplomacy". You indicate that your own research shows that TV "...is rapidly becoming a primary source of information for most of the world's people."

That begs the question of: should we be continuing the modernization of the Voice of America?

ANSWER:

The impact of VOA has been demonstrated time and again over the past 47 years. As we enter a new era in East-West relations with the advent of glasnost, the need for us to convey a strong, clear message throughout the world becomes even more important.

VOA cannot carry that message, however, without tending to our aging network. Right now, the average age of VOA transmitters is 25 years. We have reconsidered our entire modernization program focussing it on refurbishments of existing stations and getting the three top priority shortwave relay stations on line as soon as possible. This is an absolute minimum requirement if VOA is to remain a global broadcaster.

USIA considers radio and TV to be complementary, not competitive, media. VOA's radio programs have a proven record of reaching hundreds of millions of listeners around the world with no access to uncensored information. TV, on the other hand, has emerged as an important source of local news and information as well as programming for USIS operations.

VOA and USIA-TV are cooperating in a number of joint ventures, including satellite delivery of VOA programs over the Worldnet transponders; joint broadcasts of VOA and Worldnet programs; and staff exchanges.

QUESTION:

VOA has a regular audience of 127 million. What is the regular audience for your TV broadcasts?

ANSWER:

There is no "audience" for WORLDNET in the same sense as there is an audience for VOA broadcasts. VOA programs are received directly by foreign radio listeners, while WORLDNET programs are for the most part transmitted overseas for subsequent re-transmission by local broadcasters, often as part of other programs that already exist. It is therefore very difficult -- and probably not very meaningful -- to attempt to develop an aggregate number that represents WORLDNET "viewership" on a global scale.

We do know from post placement reports that programs transmitted via WORLDNET are used frequently by television broadcasters around the world. Prior to the cessation of non-interactive broadcasts in October, 1988, material from such WORLDNET programs as "Newsfile", "Hour USA" and "America Today" were used on local news and current events programs in dozens of countries around the world. Surveys commissioned by the USIA in a number of Third World countries (the results of which were provided to Congress in September, 1989) demonstrated that, through such usage, WORLDNET programs could reach vast audiences on a daily basis. A copy of the summary of our full report on these surveys is attached.

WORLD RADIO & TELEVISION RECEIVERS

as at

DECEMBER 1987

The following estimates of population and numbers of radio and television sets, (both at December 1987) are derived from many sources. Information sometimes becomes available which indicates that previous estimates of populations or set figures have been exaggerated. Figures can, therefore, on occasion be revised downwards as well as upwards.

Some countries for which a television set estimate is given do not operate their own service. Set owners can, however, receive television programmes from neighbouring countries, or use their sets to view video recordings.

WORLD RADIO & TELEVISION RECEIVERS

as at

DECEMBER 1987

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International Broadcasting & Audience Research Library
June 1988

WORLD RADIO AND TELEVISION RECEIVERS - 1987
(All figures approximate)

	Population ('000s)	RADIO Number of Radio Sets (excluding wired receivers) ('000s)				TELEVISION Number of Television Receivers ('000s)		
	1987	1955	1965	1975	1987	1965	1975	1987
WORLD FIGURES	5,000,000	237,000	529,000	1,010,000	1,902,000	177,000	398,000	863,000
EUROPE								
Western Europe	433,000	65,310	116,500	186,600	347,000	49,400	103,400	183,000
USSR & Eastern Europe	400,000	20,260	59,700	92,600	170,100	24,000	87,000	136,300
MIDDLE EAST (inc. North Africa)	254,000	2,200	12,300	29,300	62,000	1,250	6,000	22,400
AFRICA								
South Africa	32,000	875	2,600	4,800	10,500	-	500	3,500
Other Countries	429,000	360	4,800	18,500	47,900	100	600	10,900
ASIA								
Chinese P.R.	1,080,000	1,000	6,000	35,000	250,000	70	750	112,000
India	780,000	1,000	4,800	24,000	65,000	2	300	7,000
Japan	122,000	12,000	27,000	87,000	110,000	18,000	42,000	70,000
Other countries	760,000	1,800	13,300	49,700	114,500	700	8,950	43,400
WESTERN HEMISPHERE								
United States of America	245,000	111,000	230,000	380,000	520,000	68,000	110,000	180,000
Canada	26,000	5,500	14,000	23,000	34,000	5,000	9,500	16,000
Latin America	401,000	12,600	29,400	62,800	140,600	7,400	22,600	67,500
West Indies	11,000	190	860	6,000	5,700	100	1,200	2,200
AUSTRALASIA & OTHER OCEAN TERRITORIES	27,000	2,760	7,800	13,000	24,800	3,200	5,000	9,100

JUNE 1988 INTERNATIONAL BROADCASTING & AUDIENCE RESEARCH LIBRARY

Note: Due to rounding, area figures may not add up to world total.

VOA Early Morning Broadcasts

QUESTION:

Why do you broadcast in Armenian, Bengali, Dari, Estonian, Georgian, Latvian, Pashto, and Urdu in the wee hours of the morning (1:00 a.m. - 3:00 a.m.)? Some of these broadcasts in Georgian, Armenian, and Latvian are 15 minutes in length. Why such a short period? Given the budget restraints are these practices the most effective use of your resources?

ANSWER:

VOA does not broadcast any of the languages listed above between 1:00 a.m. and 3:00 a.m. The morning (local time) broadcasts for these eight languages are as follows:

Armenian	6:00-6:15 a.m.
Bengali	7:30-8:00 a.m.
Dari	5:00-5:30 a.m.; 6:45-7:30 a.m.
Estonian	6:45-7:00 a.m.
Georgian	6:15-6:30 a.m.
Latvian	6:00-6:15 a.m.
Pashto	4:30-5:00 a.m.; 6:00-6:45 a.m.
Urdu	6:00-7:00 a.m.

VOA uses a number of factors to determine broadcast schedules, including audience preferences, transmitter and studio availability, and the quality of the shortwave and medium wave signals reaching an area at a particular time.

Early morning transmissions appear to meet listener needs. In the case of the Afghan languages, Dari and Pashto, very early morning broadcasting on medium wave proved popular throughout the Soviet occupation of Afghanistan. VOA is the only Western broadcaster on medium wave to Afghanistan. With continuing civil strife in the country, we feel that it is important to sustain these services, even at the early hour. Contacts tell us that many Afghans rise early and value VOA as an accurate, objective source of news, via very clear medium wave transmissions. The other languages target largely rural societies where early morning listening is much more common than in the industrialized West. In all cases, we have found 15- and 30-minute broadcasts to be an effective means of relaying news and information to denied areas.

Language Service Reductions

QUESTION:

Your budget justification states that at least two language services will be eliminated in Fiscal Year 1990. How were they selected? What criteria and rationale had been established to make decisions concerning the elimination of language services? What happens to the staff of these two services?

ANSWER:

VOA plans to convert the Greek and Turkish Services to field placement services in order to achieve budget efficiencies. Eliminating direct broadcasts in Greek and Turkish will save approximately $600,000.

VOA took into account several factors in making this decision, including shortwave listening habits, present and potential audience, cost, and the potential for placement of VOA programs on local stations. The Greek and Turkish Services have very small audiences. According to the latest research, less than 1% of the Greek population listens to VOA Greek on shortwave. Turkish listenership is less than 2% of the potential audience. Shortwave radio is not an important means of communication in Greece and Turkey, and VOA has no access to medium wave transmitters for this region. VOA has had great success in supplying programs to local Greek stations and will continue this effort. We are also vigorously pursuing placement opportunities in Turkey.

We consider it unfortunate that we should lose the extra value of continued direct uncensored contact with listeners in two strategically important NATO allies, despite the small size of existing shortwave audiences in these countries. However, the increases in audience size due to initiation of the feed services will compensate for this.

VOA will make every effort to help the employees affected by this change find jobs at VOA, USIA, and elsewhere.

TV Marti Budget Amendment

QUESTION:

Does the Administration plan to follow up their transmittal of the authorization bill with a budget amendment for the $16 million authorized to be appropriated for 1990? If not, where in USIA's 1990 budget is the $16 million to be absorbed?

ANSWER:

The Administration strongly supports TV Marti. USIA is currently working with OMB to formulate a budget amendment that may well involve absorption of some of the TV Marti costs by USIA. Details of the amendment have not yet been completed. It is Administration policy that TV Marti will be accommodated within the resource levels agreed to for function 150 in the recently negotiated bi-partisan budget agreement. It would be most unfortunate if USIA's pending 1990 appropriation were to be subjected to major adverse impact in accommodating TV Marti.

Status of TV Marti

QUESTION:

Last year we appropriated $7.5 million to conduct a test of television broadcasting to Cuba. What is the current status of that effort?

ANSWER:

USIA, acting in close consultation with an inter-agency coordinating task force, is moving with all deliberate speed to develop and test a television facility capable of reaching Cuba with a quality signal. The initial approach involves an aerostat tethered on U.S. soil at Cudjoe Key, Florida. Other delivery means, such as aircraft-based facilities, will be investigated.

The technical tests are being conducted under the authority of PL 100-459, enacted September 30, 1988, which earmarked $7.5 million in VOA's radio construction account for this purpose. We have already signed a contract with the General Electric Company for a system design, and expect, in the near future, to sign a contract for the design, fabrication, integration, and operation of an aerostat-based transmission system. The aerostat-carried facility test should be completed and reported in 10-11 months from the signing of this contract. Other aspects of the project -- regulatory, political, legal -- are being reviewed by the appropriate Federal agencies. We currently estimate that the aerostat system will be ready to begin test broadcasts to Cuba in early November.

National Endowment for Democracy

QUESTION:

NED is apparently taking a lot of credit for the results of the election in Chile last October. There is now a major effort to have an observer mission in Panama for the presidential, legislative and municipal elections scheduled for May 7, 1989.

Is there any thought that the conditions in Panama are similar to those in Chile and that Noreiga can meet the same fate as Pinochet did at the polls?

ANSWER:

While it is true that the Endowment has been providing much-needed support for activities which promote a peaceful transition to democracy in Chile -- including efforts to ensure a fair process for the October 1988 plebiscite -- it is the Chileans who are responsible for the recent course of events in their country. While it is hard to make specific comparisons between the pre-plebiscite environment in Chile and the pre-electoral period in Panama, there have been many more expressions of concern in Panama over the possibility of electoral fraud. Therefore, an observer delegation there has an especially important role to play as an incentive for establishing procedures for a fair process and to bear witness to the actual conduct of the elections.

QUESTION:

Various people have suggested to me that NED is a conservative program that I ought to be supporting. If that is so, why do I keep getting the post cards from South Carolina members of the conservative caucus urging me to stop funding of labor unions and activist groups--which I presume are the political party institutes as well as the one organized by the Chamber of Commerce--through NED?

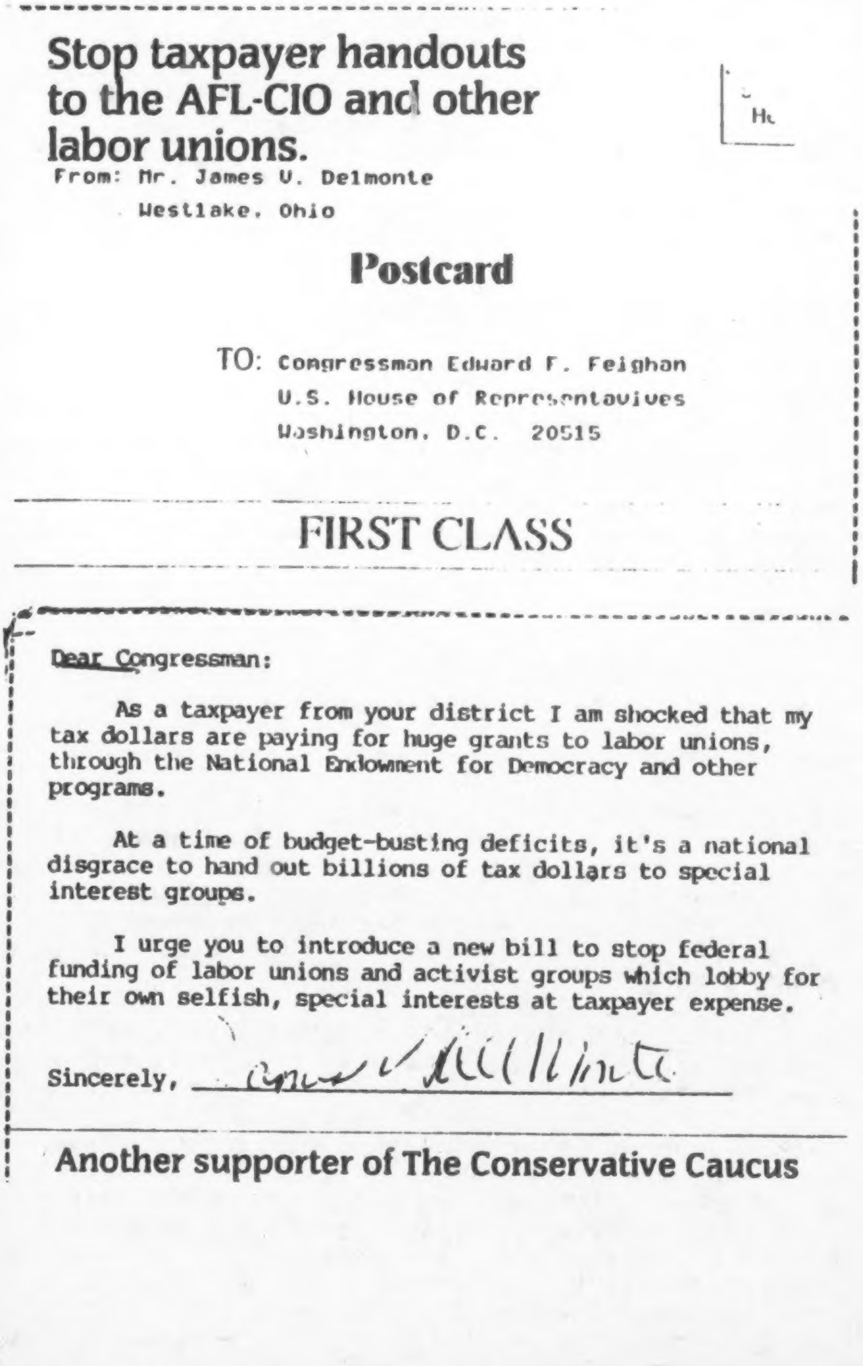
ANSWER:

The National Endowment for Democracy is a nonpartisan organization governed by an independent bipartisan Board of Directors. In its orientation, the Endowment is only partisan with respect to democracy itself.

The postcards which the Conservative Caucus has sent to members of Congress are incorrect in a number of respects; a sample postcard is enclosed. First, the Endowment does not award "huge" grants to labor unions -- in fact, the labor program has been reduced by almost two-thirds over the past five years due to the Endowment's budget limitations.

Secondly, "billions of tax dollars," are not spent, as the entire Endowment budget is only $15.8 million for the current fiscal year.

And third, none of the funds allocated to labor are spent on lobbying or any other activities in this country. Democratic trade unions -- like business associations, political parties, youth and women's groups and cooperatives -- are an essential element in any truely pluralistic society. With Endowment support, the Free Trade Union Institute provides support to help build and strengthen free trade unions abroad. Examples to FTUI assistance include aid to the independent trade union Solidarity in Poland, to the Trade Union Congress of the Philippines, and to the CUS labor federation in Nicaragua. These are just a few of the important programs which NED funds enable American labor to conduct.



Stop taxpayer handouts to the AFL-CIO and other labor unions.

From: Mr. James V. Delmonte
Westlake, Ohio

Postcard

TO: Congressman Edward F. Feighan
U.S. House of Representavives
Washington, D.C. 20515

FIRST CLASS

Dear Congressman:

As a taxpayer from your district I am shocked that my tax dollars are paying for huge grants to labor unions, through the National Endowment for Democracy and other programs.

At a time of budget-busting deficits, it's a national disgrace to hand out billions of tax dollars to special interest groups.

I urge you to introduce a new bill to stop federal funding of labor unions and activist groups which lobby for their own selfish, special interests at taxpayer expense.

Sincerely,

Another supporter of The Conservative Caucus

Institute for Representative Government

QUESTION:

For the last two years funding has been provided for the Institute for Representative Government. The Institute was established to bring delegations from other national legislatures to the United States for 2 to 3 weeks of intensive study of Congress and the American political system. The groups represent the party balance in these legislatures and are composed of those who are now influential in the legislature and parties, or will likely be in 10 years.

In fiscal 1988 there were groups from Egypt, Morocco, Argentina, Uruguay and Turkey. In fiscal 1989 groups are scheduled from Argentina, Korea, Spain, Portugal and probably Mexico.

I am told that the IRG brings a higher level of persons at less cost than any other USIA exchange program. I have copies of several testimonial letters and cables but let me quote from a letter from Ambassador Wisner in Cairo, writing his appreciation of the visit by 10 Egyptian Parliamentarians in June 1988.

Ambassador Wisner said that this visit:

> "Thoroughly shook the anti-American reflexes of several of the visitors from the Egyptian opposition. One returned to write a series of articles in his newspaper expressing wide-eyed wonder at how America really works."

Now why does USIA propose cutting off the funding before completing the original 3 year test of the IRG program?

ANSWER:

The FY 1988 appropriation earmarked $540,000 for the Institute for Representative Government for a "pilot program". Although the FY 1989 appropriation did not specifically earmark funds for the Institute, the Conference Report on the bill indicated that an additional $540,000 was to be provided to the Institute in FY 1989. The 1988 grant covered the Institute's administrative costs and supported exchanges with Egypt, Morocco, Argentina, Uruguay and Turkey. USIS posts have praised the quality and results of these projects. The 1989 grant was awarded on March 17, 1989, providing funds for exchange projects with Spain, Portugal, South Korea, Mexico, and Argentina. The project with Argentina has been completed. As a result of Executive Branch deliberations on the President's 1990 budget it was decided to non-recur the IRG program.

The Agency is mindful that the Committee, in initially recommending funding for the Institute, indicated that the pilot program would go on for three years. However, because of the limitations on the Exchange Program budget necessitated by overall budget stringencies, we request that the FY 1990 appropriation not earmark a specific amount for the Institute. The Bureau of Educational and Cultural Affairs has a Congressionally-mandated and approved process for competing and awarding grants to private sector organizations to conduct exchanges. This process promotes both quality and cost effectiveness in our programs. The Institute for Representative Government will be encouraged to compete on an equal basis with other private sector U.S. organizations for Agency funding. Based on their track record they would be a strong competitor for a grant.

Television and Film Service

QUESTION:

The budget request for fiscal year 1990 is about $36 million. How much of the $36 million request is for Worldnet?

ANSWER:

On October 1, 1988, we stopped transmitting by satellite our non-interactive TV programs as required by our 1988-89 authorization legislation. Since then the definition of WORLDNET, at issue over the years, has again come into question. As presented in our justifications, a total of $16,025,000 is requested for WORLDNET to cover all satellite transmission contract costs and the non-salary costs of producing programs for satellite transmission and providing technical equipment and support for our overseas posts.

The House Foreign Affairs Committee has identified as WORLDNET, the staff and contractual costs of producing interactive and Agency originated passive program productions, and the allocated share of the satellite transmission costs of delivering these programs to USIS posts abroad. This is a reasonable way to define WORLDNET. We requested $12,633,000 for these purposes.

WORLDNET Viewership Outside the U.S.

QUESTION:

Do you know how many people view WORLDNET outside the U.S. overseas missions? In this era of budget restraints, have you measured the effectiveness of WORLDNET versus VOA?

ANSWER:

The simple answer to the first question is "no." There is no "audience" for WORLDNET in the same sense as there is an audience for the VOA, since VOA programs are received directly by foreign radio listeners, while WORLDNET programs are for the most part transmitted overseas for subsequent re-transmission by local broadcasters, often as part of other programs that already exist. It is therefore very difficult -- and probably not very meaningful -- to attempt to develop an aggregate number that represents WORLDNET "viewership" on a global scale.

We do know from overseas post placement reports that programs transmitted via WORLDNET are used frequently by television broadcasters around the world. Prior to the cessation of non-interactive broadcasts in October, 1988, material from such WORLDNET programs as "Newsfile", "Hour USA" and "America Today" were used on local news and current events programs in dozens of countries around the world. Surveys commissioned by the USIA in a number of Third World countries (the results of which were provided to Congress in September, 1989) demonstrated that, through such usage, WORLDNET programs could reach vast audiences on a daily basis. A copy of the summary of our full report on these surveys is attached.

We have not measured the effectiveness of WORLDNET versus the VOA because the two media are not directly comparable. VOA has essentially a single purpose: reaching mass audiences directly with programming designed for broad appeal. WORLDNET has many purposes: the transmittal of material for placement on foreign television stations, broadcast of special-interest public affairs programs for screenings to invited DRS audiences, transmission of special events such as Presidential speeches and news conferences, and of course interactive programs, which themselves are used in many different ways. While both WORLDNET and the VOA have proven their effectiveness in achieving Agency goals many times over, we do not believe that they can fairly and realistically be compared to each other.

Impact of Congressional Restriction on WORLDNET's Programming and Foreign Audiences

QUESTION:

As of October 1, 1988, WORLDNET has been prohibited from broadcasting non-interactive programs because of a requirement in the foreign relations authorization act that a survey shows such programs attract an audience of 2,000,000 in Europe. What has been the impact of this restriction on WORLDNET's programming and impact on audiences abroad?

ANSWER:

The impact has been twofold. First, the prohibition has deprived us of the ability to transmit timely information news and information about breaking events to foreign audiences around the world. In an era when an ever-increasing number of people rely on television as their primary source of information about the rest of the world, the prohibition cut off our most effective means of exploiting this medium.

Secondly, WORLDNET had become, in a remarkably short time, a valued and respected source of information and program material in the foreign journalistic community. Television journalists around the world came to rely on USIS for high-quality, placeable stories on the important issues of the day. The sudden cut-off of the service was therefore a serious embarrassment to our posts and effectively undercut the strong relationships that many of our PAOs had been able to build through the daily provision of WORLDNET materials.

Our post in Tel Aviv recently sent us a cable that dramatically illustrates the impact of the prohibition: "One regional TV station once relied heavily on WORLDNET's 'America Today' coverage for news footage. It can't at present. So its viewers ... were treated last week to same-day footage from a Soviet satellite and a service labelled "3SAT" of Gorbachev's visits to Havana and London -- but nothing similar on the Mubarak and Shamir visits to Washington."

Savings in the Television Service

QUESTION:

For 1989 we appropriated $38,500,000 for the Television and Film Service. The justifications state that this can be reduced by $700,000 due to the restriction on WORLDNET non-interactive programming. When will USIA propose a reduction in the $38,500,000 carried in the appropriations act for the Television and Film Service?

ANSWER:

The Agency plans to forward a reprogramming letter to the Committee within the next month. This will inform the Committee of our intention to use the $700,000 for other purposes, and will also address other funding changes.

QUESTION:

How much is included for 1990 for non-interactive programming?

ANSWER:

Of the $36,300,000 budgeted for USIA's Television and Film Service in 1990, a total of $15,048,000 is included for non-interactive programming. These estimates include the costs of acquired ($9,313,000) and USIA-produced ($5,735,000) passive programs and program segments. Appropriate staff salaries and non-staff costs are included. The programs and program segments are intended for use by USIS posts abroad and can be relayed to them by satellite or by pouch or commercial express service. As projected in the 1990 budget, we expected legislation to permit us to transmit these program materials by satellite. Thus, the non-interactive estimate noted above includes $8,966,000 in satellite transmission costs, a pro-rata share of the total budgeted for contract satellite service.

Additional Benefits of Television Network

QUESTION:

You state on page 13-1 that the installation of 155 television receive-only satellite dishes will have "significant, cost effective side benefits". What are these benefits? Will they result in a reduction of budget needs?

ANSWER:

Aside from the benefits that accrue from our satellited television programs, the existence of a worldwide television delivery system allows for the economical transmission of other USIA information.

For example, through the use of subcarrier technology which is transmitting simultaneously with the WORLDNET television signal, other vital Agency services can be delivered overseas. The delivery of the Wireless File, VOA and other services via satellite simultaneously with a TV signal will result in substantial savings over existing means of delivery.

However, computing these savings is problematic . Costs to fully equip each post for full subcarrier reception are approximately $6,000. This will vary depending on the type of equipment currently in use at each post. In addition, modifications will have to be made to our full television network. Equipment is needed in Washington, at local "up-link" earth stations that send TV signals to leased satellite transponders, and at monitoring and control "downlink-uplink" earth stations. We now anticipate that acquisition and installation of this equipment will begin in late FY 1989 or early FY 1990, and will be complete within six months.

Our preliminary cost-benefit analysis shows that on average, the break-even point -- the point where savings from the new technology over the old methodology will begin to outweigh the capital equipment costs -- will occur approximately two years after the system is fully operational at post. Thus, savings should begin to materialize in 1991.

However, we should point out that the benefits extend well beyond the cost savings involved. This technology will result in a clear signal to many posts that now struggle with incoming Wireless File signals that are intermittent, and that use unreliable equipment that is expensive to maintain. Discussions with post officers who still receive the Wireless File via radioteletype, a process that takes four hours and is frequently unreliable, reveal how dramatic the impact would be of flawless Wireless Files delivered regularly, within 15 minutes, for use by the Ambassador and local newspapers. The project represents a cost-effective means of using state-of-the-art technology to help our posts do their jobs.

Use Of VOA Employees On WORLDNET

QUESTION:

Does the Television and Film Service use VOA employees to do translations and voicing? If so are these employees compensated through some form of overtime payment charged to the Service or are they treated as a purchase order vendor? How are the employees selected? How do you prevent abuse through favoritism in the selection? What controls are in place to ensure that this translation and voicing work is performed outside of regular VOA work hours?

ANSWER:

The Television and Film Service uses VOA employees to do translation and voicing. These employees are compensated through overtime pay charged to the Television and Film Service. They are not compensated through purchase orders.

Employees are selected by their supervisor based upon experience and their skills for television work. Once the employees have been selected they are given a screening by Television to determine their narration ability and camera presence. The VOA employee's supervisor is the responsible person along with the Television Service supervisor to ensure that a wide variety of persons is assigned to work for Television.

The responsibility for preventing abuse is vested with the employee's supervisor. The Television and Film Service requires a mix of different persons for its television assignments.

Employees' supervisors are required to certify that employees working for the Television Service are working on their off days or after their regular work hours with VOA. The employee's overtime must be approved by his/her supervisor before it is approved by Television.

Funding for Seville World's Fair

QUESTION:

Earlier this year, Senator Rudman and I wrote you of our approval of the reprogramming of $400,000 for the initial funding needs for the Columbus Quincentennial exposition in Seville, Spain in 1992. USIA's 1990 budget includes $5,000,000 of the $15,000,000 government contribution to the $33,000,000 total cost of fabrication and operation of the U.S. Pavilion at the World's Fair, as well as the United States' participation in a 1992 exposition in Genoa ($5,000,000) and funding for a Latin American travelling exhibit ($3,000,000). The Departments of State and Commerce are also to contribute $5,000,000 each to the Government's $15,000,000 share of the costs.

The $400,000 for 1989 was to be augmented with $700,000 from the Departments of State and Commerce. Has the $700,000 been made available to USIA?

ANSWER:

While the additional funding has not yet been made available to USIA, we are currently negotiating with both the Department of State and the Department of Commerce to accomplish the transfers. We will keep the Committee informed of our progress.

Seville World's Fair

QUESTION:

USIA has been tasked by OMB with raising 50 percent of the total $30,000,000 Seville project costs from corporations and states by June 1989. What is the progress of that effort?

ANSWER:

In response to Presidential directive, USIA has been vigorously pursuing private sector support for participation in the Seville World's Fair. Preliminary fund raising prospects appear reasonably good that $15 million in project support can be obtained from U.S. states or from the private sector.

State Participation

All 50 states were invited to participate on the basis of reimbursing USIA $200 per square foot for building construction and management. In addition, an average $300 per square foot that states will spend to develop and operate their exhibits will offset federal spending to develop that space.

With total state space projected at 10,000 to 15,000 square feet, non-federal support from this area would be $5.0 - 7.5 million:

-- Texas has introduced legislation for $4 million to fund a 2,500 square foot exhibition in the U.S. Pavilion. We are awaiting a letter of intent.

-- California has sent a letter of intent. It has submitted legislation for $100,000 to fund a private sector marketing campaign. The state anticipates a $10-12 million project with half the funding from the private sector. The state is seeking approximately 10,000 square feet of exhibition space.

- The New York State Department of Tourism, in conjunction with Visit New York State USA, has contacted USIA about the possibility of a 2,000 square foot exhibition.
- Other states expressing interest in participating in the U.S. Pavilion include South Carolina, Alaska, Florida, Maryland, Minnesota, New Mexico, and Wisconsin.

Smithsonian Participation

The Smithsonian Institution has asked that we set aside 8,000 square feet for an exhibition it will organize with private sector funds. The Smithsonian will reimburse USIA $200 per square foot or $1.6 million. Further, the value of the exhibition conservatively figured at $300 per square foot would contribute an additional $2.4 million to the project for a total of $4 million.

Corporate Sponsorship

USIA has contacted several major U.S. corporations seeking sponsorship of key components of the U.S. Pavilion.

- Eastman Kodak is considering sponsorship of the $3.5 million giant-screen theater of the U.S. Pavilion. Kodak asked that we get a concession from the Seville organizers allowing them to sell film in the U.S. Pavilion (Fuji Film of Japan had signed an $8 million contract with the Expo 92 authority which designated Fuji the official film of the Expo). This concession has been granted and Kodak received a formal proposal from USIA on March 9.
- The American Plywood Association has submitted a proposal to build and provide rent-free staff housing for the Seville Project. They would develop a 3,000 square foot "Home of Tomorrow" exhibit for our corporate exhibit space. The net donation to the U.S. Government will be approximately $800,000.
- AT&T has been invited to sponsor the Pavilion's $1.5 million art gallery and performing arts program. They are considering sponsorship and have told us to expect a decision in the next few weeks.

-- Merrill Lynch and American Airlines have each indicated a possible interest in sponsorship of the $1.5 million VIP lounge of the U.S. Pavilion. American is also considering donating airline tickets for the project.

In addition, USIA will offer 10,000 square feet of exhibition space to U.S. corporations, also on the basis of a $200 per square foot reimbursement. The exhibit these corporations build, with an average value of $300 per square foot, will provide an offset to the project of $5 million.

Restaurant Concession

The Pavilion's 5,000 to 10,000 square foot restaurant/gift shop will be operated as a concession. Anheuser Busch has expressed interest in this area. The concessionaire will reimburse USIA $100 per square foot to cover building construction costs. In addition, the concessionaire will spend approximately $200 per square foot to develop the facility for a project offset of $1.5 - 3 million.

QUESTION:

Am I correct that the administration plans to reduce the Federal contribution proportional to any shortfall in corporate and state contributions?

ANSWER:

That is correct. However, based on corporate and state solicitation efforts to date, we are reasonably confident that we will be able to raise $15 million in corporate and state contributions to the project, and that, therefore, there will be no reduction to the Federal contribution.

QUESTION:

In past years the cost of U.S. participation has been fully budgeted by USIA instead of this tripartite division proposed by OMB. USIA, State, and Commerce are all funded by this bill. If the corporate and State contributions are assured by June 1989, and if the Subcommittee decides to proceed with the funding of U.S participation, would there be any USIA objection to appropriating the full amount to USIA?

ANSWER:

USIA would not object to this arrangement if, as the question suggests, additional funds are provided for the Federal share of the Seville Expo.

QUESTION:

It is nice to contemplate spending $33,000,000 for expositions and exhibits in Spain, Italy, and Latin America. What are we doing to celebrate Columbus' discovery of America in America?

ANSWER:

The Christopher Columbus Quincentenary Jubilee Commission, which was established by Congress in 1984, is charged with the responsibility "to plan, encourage, coordinate, and conduct the commemoration of the voyages of discovery of Christopher Columbus." Although the Director of USIA is not a member of the Commission, an observer from USIA attends Commission meetings. It appears that most of the activities with which the Commission is involved will take place in the United States.

Travel of Former Director Wick

QUESTION:

I will make part of the record a listing of the travel of the former USIA Director, Charles Z. Wick. Between June 9, 1981 and December 9, 1988, Mr. Wick made 120 trips at a total cost of $951,762. Included in the total is $706,068 for security which we were told was based on Mr. Wick's relationship to President Reagan.

In view of the reductions required in USIA's base budget, it would be my recommendation that the Director's travel could be trimmed, particularly with regard to the security. So we don't have a repeat of the previous experience, if there is any determination that the security has to be maintained, we would expect to be consulted. When Mr. Gelb is confirmed we would appreciate having his comments on this item.

ANSWER:

Director Wick's Travel - There are many reasons why the Director of this Agency must travel extensively. USIA currently operates 204 posts in 127 countries, and employs almost 1,000 Americans and over 3,800 foreign nationals overseas. It is important for any USIA Director to maintain close personal contact with our Public Affairs Officers in the field and to gain a first-hand knowledge of how the Agency operates, both in order to make informed policy decisions and for morale purposes. In addition, Director Wick's trips overseas resulted in significant accomplishments, especially in the area of US-USSR relations.

Anticipated Security Costs - The Committee's data is correct; almost three-fourths of the cost of Mr. Wick's travel was related to security. While Mr. Wick served as Director of the Agency we provided overseas security support to him by preparing threat assessments and by arranging with the Department of State to furnish protection for him when travelling overseas.

Over the last three years, numerous terrorist activities occurred in countries where former Director Wick was scheduled to visit. In France during 1986, we noted the efforts of the "Lebanese Armed Revolutionary Faction" (LARF) and "Direct Action" to destabilize the French political arena. When Mr. Wick attended the June 1987 Economic Summit in Venice, terrorist elements detonated a car bomb directly across the street from the embassy compound in Rome. Prior to Mr. Wick's trip to Greece in early-1988, a Greek industrialist who had been personally known to him was violently assassinated. Similarly, an assassination attempt was made against Turkish Prime Minister Ozal prior to Mr. Wick's October 1988 trip to Turkey.

Although there were no specific overseas threats identified against the Director, the potential threat warranted a dignitary protection detail, and Mr. Wick was normally provided a four-person detail. As Mr. Gelb assumes the directorship, we plan to continue the practice of providing a prudent level of protection, particularly in light of the high visibility of USIA public diplomacy efforts.

Our liaison activity with the Department of State's Threat Analysis Division has enabled us to stay abreast of specific terrorist threats worldwide. Similarly, data from the Federal Aviation Administration (FAA) has furnished us with up-to-date information concerning the status of security at specific airports and whether or not those airports meet FAA security standards.

We currently believe that adequate dignitary protection can be afforded to Mr. Gelb by one Agency protective agent. A two or four-person detail from the Department of State does not seem warranted at this time. This would eliminate a large portion of the security-related travel costs.

In providing security services to Mr. Gelb, we will continue to conduct liaison activities with the Department of State's Bureau of Diplomatic Security and closely coordinate all overseas travel with its Regional Security Officers (RSOs). An Agency security officer will furnish portal-to-portal services abroad for the Director.

U.S. INFORMATION AGENCY

TRAVEL OF DIRECTOR WICK AND RELATED COSTS

VOU NUM	FY	DATES OF TRAVEL	DESTINATION	TRANS.	PER DIEM	MEET. SPACE	OTHER	TOTAL	SECURITY	TOTAL
1	81	6/9-7/1/81	EUROPE	3255.00	1866.50		214.13	5335.63		5335.63
2		7/7-7/19/81	LOS ANGELES	1148.00				1148.00		1148.00
3		8/10/81	NEW YORK	118.00				118.00		118.00
4		8/17/81	LOS ANGELES		75.00			75.00		75.00
5		8/28-9/20/81	EAST ASIA	2630.91	1249.33	280.70	49.84	4210.78		4210.78
6		9/21-24/81	NEW YORK	78.00	237.68	166.38	29.90	511.96		511.96
		FISCAL YEAR 81 TOTAL		7229.91	3428.51	447.08	293.87	11399.37		11399.37
7	82	10/30-11/9/81	LOS ANGELES	969.00	630.00	1482.72	12.00	3093.72		3093.72
8		12/29-12/30/81	LOS ANGELES	862.00	70.00	148.10		1080.10		1080.10
9		1/6-7/82	NEW YORK	78.00	75.00	54.46		207.46		207.46
10		1/30-2/22/82	EUROPE	3833.00	1686.92	238.50	247.29	6005.71	31128.00	37133.71
11		2/23/82	NEW YORK	78.00				78.00		78.00
12		3/3-10/82	LOS ANGELES	378.00	533.23	1038.59	146.97	2096.79		2096.79
13		3/29-4/8/82	EUROPE	3105.00	507.01			3612.01	17985.00	21597.01
14		4/28-29/82	NEW YORK	68.00	4.00		29.90	101.90		101.90
15		4/30-5/1/82	CHICAGO	537.00	87.66	311.08		935.74		935.74
16		5/12-16/82	PARIS	3282.00	209.00			3491.00	9476.00	12967.00
17		5/19-20/82	COLUMBIA, SC	140.00	23.00			163.00		163.00
18		6/13/82	NEW YORK	100.00	15.00			115.00		115.00

TRAVEL OF DIRECTOR WICK AND RELATED COSTS

VOU NUM	FY	DATES OF TRAVEL	DESTINATION	TRANS.	PER DIEM	MEET. SPACE	OTHER	TOTAL	SECURITY	TOTAL
19		6/15/82	NEW YORK	98.00				98.00		98.00
20		7/3-12/82	DENVER/LA	950.00	450.00	726.90		2126.90		2126.90
21		7/24-30/82	MEXICO	755.00	200.38			955.38	6139.00	7094.38
22		8/7-11/82	EUROPE	1481.00	320.50		4.30	1805.80	7996.00	9801.80
23		9/3-16/82	EUROPE	3482.00	1177.00	237.28	13.47	4909.75	20007.00	24916.75
24		9/22/82	NEW YORK	82.00				82.00		82.00
		FISCAL YEAR 82 TOTAL		20278.00	5988.70	4237.63	453.93	30958.26	92731.00	123689.26
25	83	10/1/82	CHICAGO	636.00				636.00		636.00
26		10/3-5/82	NEW YORK	86.00	86.50			172.50		172.50
27		10/20/82	NEW YORK	88.00				88.00		88.00
28		10/23-11/13/82	EUROPE/S.AFR	5174.00	749.22		7.50	5930.72	29178.00	35108.72
29		11/30-12/9/82	EUROPE/N.EAST	3511.00	272.81		40.00	3823.81	15775.00	19598.81
30		12/27-29/82	LOS ANGELES	539.00	160.04	216.68		915.72		915.72
31		1/21-22/83	CINCINNATI	279.00	72.00		3.00	354.00		354.00
32		1/23-26/83	WILLIAMSBURG		207.21	292.56		499.77		499.77
33		2/8/83	PITTSBURGH	132.00				132.00		132.00
34		2/14-15/83	NEW YORK	109.00	82.40			191.40		191.40
35		5/30/83	NEWPORT NEWS	49.00				49.00		49.00
36		3/6-16/83	BRAZIL	3483.00	708.81	440.65	328.38	4960.84	15987.00	20947.84
37		4/3-27/83	EAST ASIA	4533.33	1363.45	669.94	37.09	6603.81	21463.00	28066.81
38		5/1-3/83	MIAMI	598.00	156.75	169.06		923.81		923.81

TRAVEL OF DIRECTOR WICK AND RELATED COSTS

VOU NUM	FY	DATES OF TRAVEL	DESTINATION	TRANS.	PER DIEM	MEET. SPACE	OTHER	TOTAL	SECURITY	TOTAL
39		6/22-7/1/83	EUROPE	4186.00	735.73	82.24	33.00	5036.97	13959.00	18995.97
40		9/21/83	NEW YORK	44.00			5.00	49.00		49.00
41		9/15-18/83	LOS ANGELES	1184.00				1184.00		1184.00
		FISCAL YEAR 83 TOTAL		24631.33	4594.92	1871.13	453.97	31551.35	96362.00	127913.35
42	84	10/10-28/83	NEAR EAST	4741.00	1572.00	993.01	106.82	7412.83	24204.00	31616.83
43		11/10/83	BOSTON	247.00				247.00		247.00
44		11/12-16/83	NEW YORK	86.00	166.33		15.00	267.33		267.33
45	84	12/1-12/3/83	SAN FRANCISCO	1286.00	150.00			1436.00		1436.00
46		1/10-15/84	CENT. AMER.	1145.00	248.26	55.00		1448.26	5476.00	6924.26
47		1/29-2/13/84	EUROPE	4287.00	729.38	167.17	10.00	5193.55	21056.00	26249.55
48		3/30-4/5/84	EUROPE	3769.00	446.25	150.00		4365.25	11744.00	16109.25
49		4/22-5/784	NEAR EAST	4581.00	920.25	192.96	292.08	5986.29	23881.00	29867.29
50		5/25-6/4/84	EAST ASIA	4129.00	805.18	206.70	8.70	5149.58	17342.00	22491.58
51		6/27-28/84	NEW YORK	86.00				86.00		86.00
52		8/7/84	NEW YORK	86.00				86.00		86.00
53		9/20-21/84	NEW YORK	86.00	87.35		13.65	187.00		187.00
54		9/23-24/84	NEW YORK	86.00				86.00		86.00
55		9/27-10/6/84	EUROPE	4093.00	650.00			4743.00	20625.00	25368.00
		FISCAL YEAR 84 TOTAL		28708.00	5775.00	1764.84	446.25	36694.09	124328.00	161022.09

TRAVEL OF DIRECTOR WICK AND RELATED COSTS

VOU NUM	FY	DATES OF TRAVEL	DESTINATION	TRANS.	PER DIEM	MEET. SPACE	OTHER	TOTAL	SECURITY	TOTAL
56	85	10/22-23/84	NEW YORK	140.00	94.72	97.82	27.30	359.84		359.84
57		10/30-11/19/84	LA/EUROPE	3805.00	746.13			4551.13	17203.00	21754.13
58		2/1-5/85	BAHAMAS	617.00	451.74			1068.74	5603.00	6671.74
59		2/22-3/10/85	EUROPE/N.EAST	5747.45	713.13	103.35	12.01	6575.94	29741.00	36316.94
60		4/7-4/21/85	EUROPE/LA	5228.00	287.25	136.00	19.05	5670.30	24815.00	30485.30
61		5/15-16/85	NEW YORK	104.00			29.00	133.00		133.00
62		5/21-23/85	MIAMI	752.00	150.00	184.80		1086.80		1086.80
63		6/16-17/85	COCCA BEACH		75.00			75.00		75.00
64		7/7-16/85	LA/SF	1640.00	250.00		50.00	1940.00		1940.00
65		7/26-9/3/85	LA/AUSTRALIA	7276.00	1009.65	730.13		9015.78	33265.00	42280.78
66		9/10/85	ATLANTA	642.00	25.00			667.00		667.00
67		9/19-26/85	SF/SD/LA/NY	1706.00	600.00		100.00	2406.00		2406.00
		FISCAL YEAR 85 TOTAL		27657.45	4402.62	1252.10	237.36	33549.53	110627.00	144176.53
68	86	10/6-25/85	EUROPE	3741.72	1911.20	659.36	308.00	6620.28	16204.00	22824.28
69		10/29/85	PHILADELPHIA							
70		11/1-3/85	GRAND RAPIDS	284.00	76.50		3.87	364.37		364.37
71		11/6-7/85	NEW HAVEN	53.00	75.00			128.00		128.00
72		11/15-12/1/85	EUROPE	5353.44	400.15			5753.59	20848.00	26601.59
73		12/6-7/85	NY/CLEVELAND	653.00	75.00		30.00	758.00		758.00
74		1/12-1/22/86	USSR	4044.15	738.18	149.18		4931.51	16561.00	21492.51
75		2/8-2/21/86	LA/DALLAS	669.00	191.45	139.50		999.95		999.95
76		3/2-5/86	PARIS	1890.20				1890.20		1890.20

TRAVEL OF DIRECTOR WICK AND RELATED COSTS

VOU NUM	FY	DATES OF TRAVEL	DESTINATION	TRANS.	PER DIEM	MEET. SPACE	OTHER	TOTAL	SECURITY	TOTAL
77		3/26-27/86	NEW YORK	110.00	162.83	109.27	27.30	409.40		409.40
78		4/14-15/86	NEW YORK	110.00				110.00		110.00
79		5/7-5/12/86	VANCOVER/CAL	1694.13	163.50		9.87	1867.50		1867.50
80		6/17/86	GREENVILLE,NC	112.00				112.00		112.00
81		7/6/86	NEW YORK	110.00			44.00	154.00		154.00
82		7/10-20/86	LOS ANGELES	1470.00			50.00	1520.00		1520.00
83		9/18/86	NEW YORK	110.00				110.00		110.00
		FISCAL YEAR 86 TOTAL		20404.64	3793.81	1057.31	473.04	25728.80	53613.00	79341.80
84	87	10/16-18/86	DETROIT/LA	1294.00	66.00		50.00	1410.00		1410.00
85		10/20-21/86	NEW YORK	138.00			20.00	158.00		158.00
86		10/30-11/3/86	LOS ANGELES	1530.00			50.00	1580.00		1580.00
87		11/5/86	NEW YORK	138.00				138.00		138.00
88		11/15-26/86	EUROPE	2139.22	1329.75			3468.97	21283.00	24751.97
89	87	2/23-3/2/87	LOS ANGELES	348.00	350.00		50.00	748.00		748.00
90		3/12/87	NEW YORK	140.00				140.00		140.00
91		3/28-4/13/87	LATIN AMERICA	4600.50	462.26		246.49	5309.25	22069.00	27378.25
92		4/15/87	PHILADELPHIA	96.00				96.00		96.00
93		4/19-5/4/87	EUROPE	5326.00	1352.48		508.57	7187.05	19742.00	26929.05
94		5/28-6/12/87	EUROPE	4475.00	1178.52		302.03	5955.55	26824.00	32779.55
95		6/24-7/10/87	ENGLAND/FRANC	4169.00	474.00		150.00	4793.00	9986.00	14779.00
96		7/23-9/8/87	LOS ANGELES	1010.00				1010.00		1010.00

TRAVEL OF DIRECTOR WICK AND RELATED COSTS

VOU NUM	FY	DATES OF TRAVEL	DESTINATION	TRANS.	PER DIEM	MEET. SPACE	OTHER	TOTAL	SECURITY	TOTAL
97		9/13-14/87	WHITE PLAINS	108.00				108.00		108.00
98		9/22-23/87	NEW YORK	138.00				138.00		138.00
99		9/29/87	NEW YORK	140.00				140.00		140.00
		FISCAL YEAR 87 TOTAL		25789.72	5213.01		1377.09	32379.82	99904.00	132283.82
100	88	10/13/87	DETROIT	417.00				417.00		417.00
101		10/19-11/2/87	EUROPE	4424.00	957.39	2856.94		8238.33	23393.00	31631.33
102		11/12-11/29/87	CHINA/HK/JAP	2291.00	1224.52	598.55	364.04	4478.11	23479.00	27957.11
103		1/21-1/24/88	TUCSON	1837.00	20.37		10.00	1867.37		1867.37
104		2/10-2/17/88	W. PALM BEACH	610.00				610.00		610.00
105		3/11-3/12/88	NEW YORK	116.00			50.00	166.00		166.00
106		3/22-3/30/88	POLAND/CZECH.	5490.00	580.48			6070.48	15714.00	21784.48
107		4/10-4/14/88	MEXICO	820.00	182.25		26.55	1028.80	5826.00	6854.80
108		4/17-4/18/88	KANSAS CITY	462.00	97.50		32.00	591.50		591.50
109		4/20-4/21/88	NEW YORK	147.00	33.00		50.00	230.00		230.00
110		5/1-5/10/88	LONDON/ATHENS	2324.00	1229.63		10.00	3563.63	18638.00	22201.63
111		5/17-5/20/88	NEW YORK	58.00	157.25			215.25		215.25
112		5/27-6/2/88	MOSCOW		327.00			327.00		327.00
113		6/19-6/21/88	CANADA	228.25	178.75		6.00	413.00	2146.00	2559.00
114		6/29-7/13/88	EUROPE	2633.00	2948.16	2055.74	158.18	7795.08	19307.00	27102.08

TRAVEL OF DIRECTOR WICK AND RELATED COSTS

VOU NUM	FY	DATES OF TRAVEL	DESTINATION	TRANS.	PER DIEM	MEET. SPACE	OTHER	TOTAL	SECURITY	TOTAL
115		9/15/88	NEW YORK	174.00	16.50			190.50		190.50
116		9/17-10/8/88	JAPAN/USSR		2882.36	1331.10	248.59	4462.05	20000.00	24462.05
		FISCAL YEAR 88 TOTAL		22031.25	10835.16	6842.33	955.36	40664.10	128503.00	169167.10
117	89	10/17-10/19/88	NEW YORK	116.00	368.42	377.98	50.57	912.97		912.97
118		11/10-11/12/88	BOSTON	661.00	76.50			737.50		737.50
119		11/21-11/29/88	LOS ANGELES	866.00				866.00		866.00
120		12/6-12/9/88	NEW YORK	116.00	76.50		60.00	252.50		252.50
		FISCAL YEAR 89 TOTAL		1759.00	521.42	377.98	110.57	2768.97		2768.97
		GRAND TOTAL		178489.30	44553.15	17850.40	4801.44	245694.29	706068.00	951762.29

Transfer to the International Cultural and Trade Center Commission

QUESTION:

The justifications indicate the $150,000 was transferred to the International Cultural and Trade Center Commission in 1988 and that $200,000 more is to be transferred in 1989. I understand that this money is to pay for the design of a building. Since USIA just moved in 1983 at a cost of $2,600,000, why is the Agency contemplating another move?

ANSWER:

When the International Cultural and Trade Center (ICTC) Commission was established in the spring of 1988, Chairman Percy asked each member to contribute $200,000 toward the Commission's operating expenses -- not building design. That late in the fiscal year, and with a tight budget, USIA was able to contribute $100,000 initially and $50,000 at the end of the fiscal year. This was about average for other agencies' monetary contributions, and below the average for in-kind contributions of the State Department and the D.C. Government.

Monetary contributions for FY 88 were:

Dept. of Agriculture	$100,000
Dept. of Commerce	100,000
General Services Administration	230,000
Dept. of State	130,000
U.S. Information Agency	150,000

The issue of USIA or other agencies' tenancy in the proposed ICTC is currently under review by the Commission, GSA, and the concerned agencies.

USIA Buildings

QUESTION:

In 1983, USIA moved to consolidate its 10 Washington locations. The justifications show that USIA is located in 9 buildings in Washington. What happened to the consolidation effort?

ANSWER:

USIA moved only 25% of its elements, and few technical facilities, in 1983. However, the move did bring most of the Agency's employees within a two-block radius of the new headquarters building. Given the Agency's subsequent growth and newly-mandated programs and initiatives, and the need to support them with today's automation and information-processing technology, existing office and special use space quickly became insufficient. For example, space was needed for the modernization of the Voice of America; the establishment of a world-wide television satellite delivery system; the President's U.S.-Soviet Exchange Initiative; for an expanded International Visitors program; for planning for the Seville and Genoa World's Fairs; for computer facilities; for the Wireless File; and many other additions to our 1983 requirements. Even so, most of USIA's operations are located in the 400 C Street area.

QUESTION:

Please supply for the record a listing of the locations occupied in 1983 showing the square footage and employees at each location, and similar information for the current time.

ANSWER:

We do not have that information for 1983; however, we do have it for May, 1981, before the move.

	Square Footage		Employees	
Location	1981	1989	1981	1989
1750 Penna. Ave.	114,521		514	
1776 Penna. Ave.	145,980		683	
1717 H St. NW	48,565		230	
1425 K St. NW	38,145		135	
HHS-North/Cohen	186,681	372,701	1,294	1,657
Pat. Henry.	76,950	173,676	200	503
25 M St. SW	24,943		82	
Natl. Press Bldg.	3,695	12,425	12	27
Auditors Bldg.	7,928		19	
Warehouses	55,115	50,625	19	20
USIA Bldg.		331,705		1,480
Donohoe Bldg.		87,955		260
Nassif Bldg.		9,320		15
Switzer Bldg.		53,185		69
Bicentennial		5,262	(Parking spaces only)	
Total	702,523	1,096,854	3,370	4,346

QUESTION:

VOA is paying about $12 million in rent annually to GSA for the Cohen (HHS North) Building. Reportedly the building is in bad condition with major problems including the heating and air conditioning systems. One of the factors in developing the GSA rental charge is a quality rating factor. What is the quality rating factor for HHS North?

ANSWER:

GSA no longer gives quality ratings to buildings; they discontinued the practice in July, 1987. However, the last rating given to HHS-North in 1987 was 81 on a scale of 1 to 100.

Renovation of Cohen Building

QUESTION:

VOA is trying to complete a major renovation of its operation in the Cohen Building. What is the status of this project? Are there plans to install a new heating and air conditioning system? How much additional funds will be needed to complete the renovation? Is it wise to continue with this project given the condition of the building and the lack of adequate space to put the entire VOA operation in the building?

ANSWER:

The significant components of VOA modernization in Washington include the master control and network control complex, the satellite interconnect system (SIS), the System for News and Programming (SNAP), and the rehabilitation of 19 older studios, and the installation of ten smaller modular production studios. The network and master control centers, the Washington components of SIS, and a considerable portion of SNAP have been completed.

In terms of impact on the Cohen Building, the major project involves the reconstruction of the 19 oldest broadcast studios. The first nine studios have been completed and are being phased into use. Equipment has been purchased and renovation of the remaining ten studios will start in several weeks.

A distinction should be made between "modernization" of VOA studios in the building and "renovation" of the physical plant. GSA is responsible for major building systems such as heating, ventilation and air conditioning. The VOA studio project includes an upgrade of heating and cooling systems directly servicing the studios. This work was coordinated with

GSA and is close to completion. The studio renovation project is fully funded.

The Cohen Building is a pre-World War II building that we believe GSA plans to renovate at an undetermined date in the future. While this remodeling will be disruptive to VOA operations, the continued upgrade of the studios is required to provide the best possible delivery of VOA broadcasts. It will be cost effective. A substantial part of the electronic equipment can be moved.

While other renovation projects, e.g., automation of central recording, are desireable, no additional headquarters construction projects are envisioned at this time.

QUESTION:

A new USIA office is under construction in Calcutta, India under the direction of the State Department's Office of Foreign Buildings operation. Is the construction on schedule? If it is delayed, what is the reason? Does this appropriation request seek any funds to provide furniture and furnishings for the building? If so, why is USIA funding the costs of these construction project related items? Is this typical?

ANSWER:

The construction is currently behind schedule due to a number of factors -- for example, damage was caused to neighboring property during the excavation of the building site. Currently, the project is awaiting receipt of granite cladding from the contractor in Madras.

Funds for furniture and furnishings for the building are provided through the Department of State's Foreign Buildings Office. The Agency's 1990 budget request does not contain a request for these funds.

Educational and Cultural Affairs

QUESTION:

Throughout the regional summaries in the Educational and Cultural Exchange appropriations request you show a category labeled "other program expenses" of which contractor cost is the biggest item. What costs are included in the "other program expenses" category? Does the amount shown for individual countries represent the total amount that goes directly to the participants?

ANSWER:

The "Other Program Expenses" category includes expenses common to the Academic and International Visitor (IV) programs such as orientation, grantee insurance and medical costs. For the Academic Program it also includes preacademic programs such as English language training for Fulbright participants, standardized test and university application fees, enrichment programs for grantees and grant supplements to meet the tax liabilities of the new U.S. tax law. The expenses which only apply to the IV program are the costs of reception centers and grants to the community organizations which provide programming support for the International Visitor Program. The total amount shown for individual countries does go directly to the participants. Participant costs include travel, per diem, tuition, maintenance, as well as cultural, book, and other related allowances.

QUESTION:

Does the amount shown as a deduction for foreign government contributions represent cash or in-kind contributions? How much would you estimate that private U.S. organizations provide in cash or in-kind contributions to aid the U.S. government sponsored exchange program?

ANSWER:

All foreign government contributions represent cash contributions. While in-kind contributions and services may be donated, these are difficult to measure and are therefore not included in these estimates.

Almost all organizations receiving grants from USIA provide some form of cash or in-kind contribution to the exchange program. However, the wide variety of contributions and the varying extent to which they are used, make it impossible to determine a single figure.

For example, organizations receiving grants under the Academic Exchange Program typically offer in-kind contributions such as full or partial tuition waivers, coverage of travel expenses, full or partial coverage of room and/or on-campus meal plan costs, and payment of faculty salaries and/or benefits. Some academic institutions cost-share a percentage of the indirect/overhead cost applied to the grant.

Most Private Sector and Youth Exchange grants include some form of cost-sharing. Examples from these grants include the sharing of honoraria and per diem costs for conference speakers and the coverage of salaries and travel expenses. Some grants use matching funds, with USIA paying a set portion and other USG or private organizations covering an equal or higher amount. Increasing emphasis on the cost-effectiveness of grant proposals encourages innovative funding techniques and has seen a growth in such options as utilizing "home-stays" for exchange participants.

QUESTION:

The budget request for the fiscal year 1990 Private Sector program provides for $1 million in employee compensation and benefits and $8.5 million for program expenses for a total of $9.5 million. How many of the organizations receiving funds are first-time recipients of grant funds?

ANSWER:

In 1988 approximately one-quarter of Private Sector program grants were awarded to organizations which had never previously received Private Sector Program funding. Altogether, first-time grants were made to 24 organizations. We expect this level of first-time grants to continue in 1989 and 1990.

QUESTION:

What role do you see for USIA with regard to International Visitor Programs and International Citizen and Youth Exchange Organizations in the United States?

ANSWER:

The International Visitor Program has traditionally been supported by a cooperative partnership between USIA and private, locally-supported organizations throughout the United States. These organizations are responsible not only for arranging hospitality and social interactions with a broad cross-section of Americans, but also for conceptualizing and implementing the substantive content of programs in support of the visitor's objectives. It is only through such citizen involvement that the program succeeds in providing program participants with an exposure to the broad diversity of American thought, society, and institutions.

USIA provides support to these organizations through the National Council for International Visitors, a network of 103 local organizations providing services to the International Visitor Program. However, local councils sustain their activities primarily from local resources, including volunteers and fund raising, in the belief that contact with influential foreign visitors broadens the international perspectives of their own communities and their leaders.

The Youth Exchange Program of USIA works in two ways with the private sector. It seeks competent organizations to develop and implement substantive programs for groups of foreign youth visiting the U.S. and to work with overseas organizations in providing programming for American youth. Secondly, it provides limited financial support for the exchange activities of certain organizations identified through public competition, especially in the USSR and the Eastern European region. The Agency believes that expansion of these two major program foci is desirable, both to satisfy the unfulfilled demand of USIS posts for youth programming and to meet the critical need for seed money to help develop new private sector initiatives.

QUESTION:

How can USIA provide for the stability of youth exchange and student services functions?

ANSWER:

The stability of these functions is closely linked to the Agency's overall funding level as reflected in the President's request.

QUESTION:

Why was USIA's Private Sector funding reduced in the face of an overall increase in the Bureau of Educational and Cultural Affairs funding and the increasing level of activity between the Private Sector Office of USIA and the Private Citizen Exchange community?

ANSWER:

The net decrease of $1,040,000 in 1990 for Private Sector Programs results from a program reduction of $496,000 necessitated by overall budgetary constraints, and from non-recurring costs of $818,000 for one-time costs incurred in 1989 for the Seattle Goodwill Games ($500,000) and the World Ski

Championships ($318,000). These reductions are offset, in part, by mandatory cost increases of $274,000 projected for 1990.

The overall net increase in the Educational and Cultural Exchanges budget is required to offset mandatory cost increases of $4,814,000 in 1990, partially offset by non-recurring costs of $540,000 in support for the Institute for Representative Government (IRG) and the reductions in Private Sector Programs noted above. As a result of Executive Branch deliberations on the President's 1990 budget, it was decided to take a program cut in private sector programs and to non-recur the funding for the IRG.

QUESTION:

What evaluation has USIA made of the cost of the Private Sector Program versus the USIA and other exchange programs, including the USIA administrative costs?

ANSWER:

We have not undertaken a formal cost comparison of Private Sector and other types of exchange programs. Private Sector grants vary widely in duration, from several days for conference participants to several months for participants in Council of International Programs projects. The costs of participation in Private Sector exchanges may also be offset by non-governmental funding raised by the grant organization and the contribution of in-kind expenses from non-Federal sources. Academic and International Visitor Exchanges are typically of more predictable duration and cost to the Agency.

Additionally, we believe that both types of exchanges are important to a well balanced public diplomacy program, and represent differing -- but equally valid -- ways of accomplishing the Agency's exchange program objectives.

QUESTION:

In 1986, 154 students from Central America received scholarships to study at U.S. institutions of higher education. In 1988, an additional 84 received scholarships. The same level is to continue for fiscal years 1989 and 1990. Have the original 154 students completed the program and returned to their home country? Do you have a program to monitor their progress after they return home?

ANSWER:

The original 154 participants in the Central American Program of Undergraduate Scholarships (CAMPUS) completed their U.S. studies and returned home by July 1, 1988. The ongoing evaluation of CAMPUS, begun by the Agency under a contract to Development Associates (DA) with the pilot group's U.S. arrival in January 1986, has continued after their return to Central America, in the form of questionnaires to all returnees and interviews conducted by travelling DA staff. A formal report of their results is expected in June 1989. Interim findings have determined the program to be extremely successful.

Additionally, reports from U.S. embassies in Central America, all of which maintain close contact with CAMPUS alumni, indicate significant group success in achieving professional positions in business, government, and academic sectors, and a high level of satisfaction with the CAMPUS program. USIA plans to strengthen and enhance alumni programs for all recent Central American Fulbright participants.

QUESTION:

How many reception centers does USIA have to greet sponsored visitors? Are these centers staffed by U.S. government employees? What is the cost to maintain these centers? Why not use private organizations to handle this function?

ANSWER:

USIA operates three Reception Centers, in New York, Miami, and Honolulu staffed by U.S. Government employees. The Centers are responsible for meeting participants in the International Visitor Program upon their arrival in the United States and assisting them with entry formalities and ongoing flight arrangements. They are also responsible for program arrangements in their respective cities. The cost of these Centers in 1988 was $1,028,000 for rent, utilities, salaries, and other operating expenses.

Private organizations are involved in Reception Center operations in all cities. In Washington, New York and Miami, USIA maintains only minimal staff for airport reception services. Private organizations, under grant arrangements with USIA, assist when the number of arrivals exceeds the staff's capacity. In New York, Miami and Honolulu, the Centers cooperate with private organizations in arranging substantive appointments and home hospitality for program participants.

In recent years, USIA has closed two Reception Centers -- in San Francisco and New Orleans -- in the expectation that private organizations would be able to assume their responsibilities. In New Orleans, the decision was based partly on the fact that there is no longer a significant number of participants for whom that city is their initial point of entry into the United States. We are still working with private organizations in the area to develop program services comparable to those which had been provided by the Reception Center. A private organization does provide program services in San Francisco, but requires continuing financial support from USIA to meet its expenses. We continue to evaluate the possibility of further involvement of private organizations in other cities, but are not yet confident that an adequate level of services could be provided at lower cost without the Centers.

J-1 VISA

QUESTION:

USIA serves as the designating authority for all U.S. government sponsored and private organizations sponsored exchange programs. Exchange visitors enter the United States under a J-1 visa which is for a student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill. USIA's Office of the General Counsel fulfills this responsibility. The General Counsel designates (approves) sponsors to carry out specific programs. USIA provides the sponsors with authorizing forms for J-1 visas which the sponsor fills out and provides to participants who then present the form to a consular officer at an overseas post to obtain a J-1 visa.

If the designating authority is for educational and cultural exchange programs, why doesn't the Bureau of Educational and Cultural Affairs carry out this function?

ANSWER:

The exchange visitor program function, which includes the Waiver Review Branch and the Program Designation Branch, was part of the Bureau of Educational and Cultural Affairs in the Department of State. In the April 1, 1978 reorganization, combining that Bureau with the U.S. Information Agency, the exchange visitor function was split. Program Designation stayed with the Educational and Cultural Exchange Bureau and the Waiver Review Branch was assigned to the Office of the General Counsel in USIA. In 1984 the Program

Designation Branch was reunited with Waiver Review in the Office of General Counsel because it was clear that the two staffs are interdependent and cannot function efficiently separated.

QUESTION:

How many requests are processed annually? Is the staffing sufficient to review the requests and ensure that they meet the intent of the legislation? Is that staff sufficient to monitor the sponsors to be sure that the J-1 visa holder is engaging in activities authorized by the visa?

ANSWER:

The program currently consists of 4,000 designated program sponsors which represent approximately 175,000 to 200,000 exchange visitors traveling to the U.S. per year. In order to be more responsive to the scope, size and complexities of the program, additional staff would be needed. The staff has kept an accounting of the number of requests for application packages over the last few months and that number averages 105 per month. Each application requires numerous questions and follow-up with applicants -- more than just a review of documentation. Some monitoring can be with the support of computerization combined with consultation with Responsible Officers of programs and occasional on-site visits and attendance at professional meetings. In addition to designation, the same two program offices must respond daily to numerous requests for advisory opinions from sponsors of programs already designated.

QUESTION:

Is it true that the automated data system for the exchange visitor programs has not been kept current because of Agency funding priorities? How much funding is needed to make the system fully operable? What fee is charged for J-1 visas and how much would it have to be increased to cover this shortfall? Are you able to readily identify sponsors or determine how many participants have come to the United States under USIA designated exchange programs? How do you monitor the programs?

ANSWER:

During the two and one-half years prior to FY 1988, a large backlog developed in the Exchange Visitor Information System (EVIS) due to budget stringencies. However, the system was reinvigorated and updated in

FY 1988 and is now fully operational. We estimate that annual EVIS costs, the major portion of which represent data entry into the system, are approximately $175,000.

This system is essential for oversight of the exchange visitor program. Considering the magnitude and complexity of the program, the staff would be unable to provide program data of any kind in response to U.S. missions around the world, Congress, other U.S. agencies, the private sector and the academic community without the computer system which was designed and implemented while the program was under the Department of State.

No fee is charged to program sponsors for the IAP-66 form although there are costs to the Agency for printing, mailing and, of course, staff-time. The question of user fees will be looked at by the Agency -- in consultation with State Department's Consular Bureau -- to determine the feasibility and appropriateness of requiring such a fee.

Exchange Visitor sponsors can be easily identified by the Agency which keeps an up-to-date file on all designated organizations. Statistics with regard to participants can be obtained through the computer system and in consultation with the exchange sponsor who is required by regulation to submit annual reports to the Agency.

Programs are monitored in a number of ways: a) program sponsor reports, in addition to the required annual reports, are requested on an as needed basis; b) computer printouts are requested when specific information must be confirmed; c) consultation with the sponsor, in writing, telephonically or in a meeting; and, d) on-site visits.

QUESTION:

Do some of the activities of practical trainees closely parallel those of regular U.S. citizen workers? How does USIA assure that visitors and sponsors are not using the J-1 visa to circumvent the requirements of other U.S. visas?

ANSWER:

In carrying out the mandate of the Fulbright legislation to promote educational exchange, USIA must ensure that the exchange visitor program does not circumvent immigration law or have adverse impact on the U.S. labor market. Practical training programs under the current exchange visitor regulations permit the participant to gain knowledge of American techniques, methodology and philosophy in his or her field of endeavor. This can be accomplished through active participation in the day-to-day operations at the training location. Since this often places the exchange visitor in the U.S. workplace, the Agency must be assured, when designating U.S. organizations to engage in practical training activity, that the activity is training. The regular employment of foreign nationals by an American firm would not constitute an acceptable training program for Exchange Visitor Program purposes. While some training would incidentally result from employment, it is normally expected that an acceptable training program covers a definite period of time, consists of definite phases of training with specific objectives for each phase and would make provision for reasonably close supervision of the trainees' activities. The Agency, in accepting application for practical training programs requests that proposed training activities be outlined for review. On-site visits prior to designation are not made.

East-West Center

QUESTION:

The President's budget includes $20,000,000 for the East-West Center instead of the $20,720,000 proposed by the Center. What would the additional $720,000 provide?

ANSWER:

The East-West Center's original 1990 budget of $20,720,000 contained no program increases. The additional $720,000 was proposed by the Center to provide for built-in increases as follows: an across-the-board salary increase of 4.1 percent for Center employees ($242,000); within-grade salary increases ($172,000); inflationary increases in participant stipends, allowances and travel ($196,000); and increases in supplies, services, cleaning and maintenance contracts, staff travel and related items ($110,000).

These requirements will be partially offset by anticipated increases in income of $70,000 from non-Federal sources. To accommodate the remainder of the built-in requirements, program reductions of $650,000 will be necessary. The Center will reduce the number of conferences and workshops ($200,000); defer programs on economic and political relations, public relations, public education of the U.S. to the

Asia/Pacific region, and other areas ($300,000); and reduce temporary and student employment ($150,000).

QUESTION:

Did USIA include the full $20,720,000 in its request to the Office of Management and Budget?

ANSWER:

Yes, the full amount of the Center's request of $20,720,000 was included in the Agency's 1990 budget request to OMB.

Radio Marti 24 Hour Broadcasting

QUESTION:

Page one of the justification shows an increase of Radio Marti programming to 24 hours a day. Why is it necessary to be on the air 24 hours a day? How much of this programming is repeat?

ANSWER:

On March 20, 1989, taking advantage of the increased efficiency resulting from our remote control capability at our modernized Marathon facility, Radio Marti expanded to 24-hour broadcasting. No net increase in funds was required.

Research and survey results indicate there is a large potential listening audience between 11:00 p.m. and 5:30 a.m., when the station was off the air. Cubans who could not listen during the previous broadcast hours are now able to hear important news and public affairs programs as well as our most popular entertainment features.

New programs include a half-hour newscast (the fourth of the day) at 11:00 p.m. and an easy listening music show. About two-thirds of the expanded hours are repeats of current affairs programs, commentaries, the VOA Editorial, roundtable discussions, and the popular "Two at Two" program featuring music, entertainment, and letters from listeners.

Radio Marti Purchase Order Vendors

QUESTION:

How much of the budget request is for purchase order vendors (POVs)? How much of the material obtained from POVs is actually used? Have you taken steps to ensure compliance with the POVs' contracts?

ANSWER:

Purchase order vendors at Radio Marti include "Roundtable" participants, stringers/correspondents, commentators, and providers of original programs. No POVs are used in lieu of staff. POVs account for $605,895, or 4.8 percent, of Radio Marti's FY 1990 budget request of $12,700,000.

Commentaries which do not meet Radio Marti's editorial policy guidelines are not used and are not paid for. Reports sent by stringers which are not used, also are not paid for, unless they have been specifically requested by Radio Marti.

All other talent services and talent products procured from POVs are used; all are reviewed, approved and accepted by Departmental Directors before payment is made. POV contracts are closely monitored for compliance by both the department which is using the talent services/products and by the Department of Administration.

The Department of Administration Procurement Unit is responsible for the issuance of all POV contracts and for assuring conformity with procurement regulations and Agency procurement policy; two warranted procurement officers in this department monitor compliance with contracts before each payment is made. Also, a trained procurement coordinator in each individual Department assists the department director in the day-to-day monitoring of POV contracts.

Status of Marathon Modernization

QUESTION:

The construction of new transmitter facilities at Marathon, Florida, for the Radio Marti broadcasts was scheduled to start in May 1987 and be completed in approximately 90 days. During construction, programs were to be transmitted from a temporary site at Saddlebunch Key, Florida. According to your justification, it appears the project is still incomplete. When did construction actually start at Marathon? When will the modernization of Marathon be completed?

ANSWER:

The modernized Marathon station went on the air March 1, 1989, following the construction of a new transmitter building, installation of a four-antenna array, and testing.

Site preparation at Marathon began on May 19, 1987. The modernization was originally planned to be completed within 180 days.

Delay in Marathon Project

QUESTION:

What is the reason for the delay? Was the delay due to last-minute changes in construction plans? Has this delay resulted in additional costs? If so, how much? What is the actual cost to date compared to the original estimated cost?

ANSWER:

Complications in the contracting process were largely responsible for the delay in completion of the Marathon modernization. A four-month delay early in the project resulted when a contractor wanted to use a different type of piling than specified in the contract.

The second phase of the Marathon project involved construction of a new four-antenna array to enhance the signal to Cuba. Since sufficient funds were not available at the time, the project was delayed until the end of FY 1987, when funding became available.

Procedural problems in the contracting process also caused the renovation to take longer than anticipated.

The total cost of the Marathon modernization was originally projected to be $1.96 million. The actual cost was $2.2 million, which includes modifications to the building construction contract, as well as adjustments for low original estimates.

Dixon Relay Station

QUESTION:

Page 12-2 of the justification states that the Dixon Relay Station was closed. Does the estimated savings represent a net savings after the expenses that resulted from the closing? Are the two positions for Dixon designated caretakers? Can two individuals reasonably maintain the facility? Is this a safe practice? Have you considered the costs to dismantle the facility, dispose of the highly toxic PCB material, transfer employees, pay severance benefits, transfer equipment to other VOA installations, and other costs in arriving at your potential savings?

ANSWER:

Closing the Dixon Relay Station has resulted in a net savings for VOA. The expenses of staff relocation were paid in FY 1988. There are no plans to dismantle equipment although some perishable parts have been removed and shipped to other VOA stations. The two remaining employees include an antenna technician and a radio equipment technician. They are supervised by the management of Delano Relay Station in nearby southern California. The technicians maintain the Dixon Station in a caretaker status in case operations at the Philippines Relay Station have to be curtailed. It is VOA practice to have at least two individuals operating a fully powered station. Because this station is not powered, the safety risk for these two individuals is minimal. Further, the employees have been specifically instructed to avoid potentially hazardous situations. Should such work be required, staff will be brought in from Delano.

Question:

Have you considered leasing the Dixon facility to other international broadcasters rather than close the facility? Have you considered retaining the Dixon facility for contingency purposes?

Answer:

VOA has approached other international broadcasters (public and private) with offers to lease the Dixon relay station. To date, only one commercial organization has expressed interest in the site. Their proposal offered no advantage to the government. VOA is retaining the Dixon facility for contingency purposes. To this end, we have two full-time employees at Dixon to keep the station in a caretaker status.

Post Closings

QUESTION:

The 1990 budget provides for closing of USOECD Paris, the Vatican, and the Christchurch and Chiang Mai Branch posts.

What activities are carried on at these posts?

ANSWER:

Closing Chiang Mai would eliminate one American officer position and five Foreign Service National (FSN) slots. Its strategic location near the "golden triangle" of Southeast Asia has allowed it to deal with government officials (both U.S. and Thai) directly involved in the anti-drug efforts in Thailand. Also, our branch public affairs officer there has close association with the faculty and staff of Chiang Mai university. USIS Chiang Mai is also co-located with the binational cultural center. This gives our branch public affairs officer close coordination with an important cultural entity, and also permits us to assist the center in the areas of English instruction, library circulation and cultural presentations -- all with American content. Chiang Mai is the cultural capital of Thailand and is also a major informational center in Northern Thailand. Our post there has close association with the newspapers, radio and television stations.

USIS Christchurch enables USIS to maintain a broad range of programs with institutions throughout the South Island, particularly in the major cities of Christchurch and Dunedin, both major university and media centers. Its busy library draws opinion makers from around town seeking information on the United States. The post engages in USIA's full range of information and cultural activities. American Participants and Cultural groups in New Zealand typically come to Christchurch and/or Dunedin for programs. The post organizes US participation in Otago University's annual Foreign Policy Seminar with high-level NZ government policy-makers in Dunedin. The post's close collaboration with Christchurch's Canterbury University has resulted in the incorporation of American Studies elements in NZ high schools. Its public affairs support to Operation Deep Freeze uses

National Science Foundation scientists in nationwide program efforts stressing the role of US Antarctic research in protecting the environment. In the absence of a consulate, the post provides comprehensive support for Antarctica-bound CODELs.

USIS Vatican provides important day-to-day personal contact and representational functions. The post carries on traditional USIA programs, such as Amparts and International Visitors. These activities would be partially covered from USIS Rome.

USIS/USOECD has carried out the following activities: Two large, one-post group International Visitor (IV) projects have taken place, individual IV nominations are being submitted and the Ambassador himself has been on two extensive AmPart tours - to the Far East and to Africa. Our USIS post at the Economic Community headquarters in Brussels will pick up on some of these programs, and USIS Paris would provide further public affairs support to our OECD mission.

Financial Integrity Act

QUESTION:

USIA's December 1988 Financial Integrity Act report stated that the lack of adequate management controls preclude individual accountability of non-expendable personal property valued at approximately $200 million worldwide. This problem was first identified in 1985. Why has it taken so long to get control of the non-expendable personal properties?

ANSWER:

In 1988, after the new Associate Director for Management was briefed about the status of property management in USIA, he made the development of an effective property management system a top priority. A private contractor just completed a draft report of their requirements analysis of what would constitute such a system. Using the contractor's findings, the Agency's Property Manager and Chief of Technology Planning are jointly developing a detailed implementation plan. It will include necessary procedures such as the link to Agency purchasing, screening of excess property prior to purchase, and the receipt of property. In addition, the Agency's property management staff has completed a property inventory of all Washington facilities except the Voice of America, whose inventory is currently underway. It has entered about 80% of that inventory into the U.S. Department of Agriculture Property Management Information System and is now reconciling the data.

QUESTION:

The report also stated the Agency wrote off $156,832 in receivables in fiscal year 1988. What was the basis for writing off this amount? Were these travel advances?

ANSWER:

During FY 1988 the Agency wrote off as uncollectible accounts receivables totaling $70,000. These receivables were determined to be uncollectible for a variety of reasons, such as their age, the lack of supporting documents, the lack of a valid address, etc.

In the Agency's Inspector General's report, these write-offs are combined with amounts collected. The OIG reported total amounts of $142,897 for the first half of FY 1988 and $397,778 for the second half. Thus, collections in 1988 totaled $471,000.

QUESTION:

The report further noted that the Agency had substantially reduced duplicate payments to vendors. What is meant by significant in dollar terms? Have you recovered any of the duplicate payments? How could these payments have been made? The report implies that duplicate payments are still being made. What action is being taken to prevent duplicate payments? Was any action taken against the responsible managers?

ANSWER:

At the end of fiscal year 1988, the Agency had 147 accounts receivable amounting to $260,744. Of the total receivables, only two totaling less than $1,000 comprised the pending collections of duplicate payments. This represents a very small component of the total vendor payments processed by USIA during the fiscal year (84,026 payments totaling $312,131,325).

Nine duplicate payments were either pending at the beginning of or made during FY 1988. Of these nine, all but two were collected or written off, a significant reduction. Of the seven resolved, four vendors refunded the amounts owed, totaling $3,411.61. Three others, totaling $260.93 that had been on the accounting records since 1983, were written off.

Several factors contributed to the errors that resulted in these duplicate payments, including an antiquated hardware/software configuration that supports the accounting system, human oversight, and temporarily misplaced or lost invoices that lead to the submission of duplicate invoices and ultimately to duplicate payments.

While human error cannot be totally eliminated, enhancements to the Agency's accounting system that are currently underway will build in edits and controls that will help eliminate duplicate payments. Under the new system, the complete obligation/payment history for each contract, purchase order, etc., will be available on line and computer edits will be performed on line. The files will also be updated on line. Currently, it takes about a week in our batch-oriented system to get an updated status (in hard copy form) of obligations and payments. The new system should be fully implemented before the beginning of FY 1990.

Since the duplicate payments have been infrequent and are partially attributable to the Agency's antiquated payment system, we have not felt it necessary to take any action against the employees involved. However, over the years, action has been taken to make employees aware of the problems so they can be avoided. These have included on-the-job training of individuals involved in the payment process and direct supervisory intervention.

Office of the Inspector General
Staff Comparisons

QUESTION:

Is the Office of Inspector General (OIG) adequately staffed to meet all of its statutory requirements? Is the office faced with a high turnover rate?

ANSWER:

The current staff of 50 positions is not sufficient to adequately meet statutory functions. Therefore, we have supplemented our permanent staff with reemployed annuitants and through contracts with public accounting firms. These additional resources currently enable OIG to fulfill its statutory functions. However, limitations in audit and inspection coverage are recognized. For example, for overseas programs and operations, OIG prefers to schedule multi-disciplinary inspection-audits, covering compliance with laws and regulations, economy and efficiency, and performance. With currently available resources, the average cycle for overseas inspections is approximately 7-10 years. Based on our experience, a more acceptable cycle would be approximately 4-6 years.

In addition, the investigative backlog is increasing. For the period ending January 27, 1989, there were 58 outstanding allegations relating to waste, fraud and abuse. Reflecting a growing awareness of the OIG mission within the Agency, input to our investigative stream has steadily increased from 25 in fiscal year 1987 to 45 in fiscal year 1988.

The OIG turnover rate is currently stable. As of September 30, 1988, OIG had achieved 82 percent of authorized strength. As of March 31, 1989, 92 percent of the authorized level was reached. OIG will continue to face an extremely competitive hiring environment as other OIG organizations vie for qualified audit, inspection, and investigation personnel.

Contract Employees

QUESTION:

Are you having to use contract employees to meet your requirements? If so, why? In what ways are contractors used to perform OIG work? How many contractors are used and what is the cost?

ANSWER:

No. The OIG has supplemented its staff with reemployed annuitants and through contracts with public accounting firms. It has been necessary to staff programmed work in this manner since it takes up to six months to process employees, the workload exceeds the resources available and it is difficult to find individuals to fill vacant positions. The individuals are primarily used for audits of grants and contracts and reviews of financial operations. In the fiscal year 1988 we used five reemployed annuitants ($94,383) and two CPA contractors ($247,387) for a total cost of $341,670.

Unions

QUESTION:

Since last year, has the relationship between the OIG and the unions improved so that the unions are telling employees to take their complaints and concerns to the OIG for investigation? If not, what efforts are being made to obtain employee confidence? Please summarize the complaints made to the OIG, their disposition, management response to the allegations, and reasons for not addressing any complaint.

ANSWER:

The relationship with National Federation of Federal Employees (NFFE) and the OIG is excellent. NFFE has brought allegations of fraud, waste, and abuse to the attention of the OIG in the past and continues to do so. The relationship between American Federation of Government Employees (AFGE) and OIG continues to improve. The OIG hosted several meetings with AFGE officials and is engaged in a series of on-going dialogue to acquaint AFGE with the OIG and the investigative process.

Employee complaints of fraud, waste, and abuse brought to the attention of the OIG continue to increase. Complaints in the first six months of FY 1989 were up over 45 percent over the same period the previous year. The complaints, which cover a wide variety of allegations, are all evaluated and investigated as warranted.

To increase the understanding of the OIG mission and to promote fraud prevention and awareness, all new USIA employees including the Foreign Service Junior Officer Trainees (JOTs) are given briefings. Also, the OIG Hotline is published in the Agency telephone directory and a reminder to report waste, fraud, and abuse was recently printed on all employees' earnings and leave statements. An article on the mission of the OIG is planned for a future issue of USIA World, the Agency's main news publication.

In the first half of 1989 a total of 22 complaints were received. Thirty-two percent of these were referred by Agency employees, and twenty-three percent were referred by Agency management. Thirteen cases were closed. Seven of the cases closed resulted in positive action taken, five resulted in the allegation being disproved or unsubstantiated, and one was closed with no action taken. During this period, Agency corrective action was taken in five instances and disciplinary action taken in three cases.

Position Cuts

QUESTION:

Do the domestic position cuts shown on pages 1-2 through 1-5 represent cuts in programs rather than support functions? What criteria has been used to establish budget priorities?

ANSWER:

Position Reductions - These cuts represent reductions in both programs and support functions. The potential cuts have been allocated as follows: Overseas Missions, one position; Voice of America, 41; Television and Film Service, 10; Program Bureau, one; Educational and Cultural Affairs Bureau, 12; and Agency Direction and Management, 51.

The largest single reduction (50 positions) occurs in various support functions in the Management Bureau.

Reductions in the Voice of America, totalling 41 positions, are the result of cutbacks in the headquarters engineering staff in line with the streamlined scope of the overall facilities modernization effort (14); conversion of the Greek and Turkish broadcast services to feed services (13); efficiencies in program related activities, caused by greater centralization of material production, reductions in selected program positions, and efficiencies in the Los Angeles and New York news bureaus (eight); and reductions in management support staffing (four) and other areas (two).

Cuts associated with the reductions to the Television and Film Service include two administrative support positions; four from the Office of Networks and Communications; and four from the Office of WORLDNET Production.

The Educational and Cultural Affairs Bureau will cut 12 positions, including six providing direct support for the academic exchange program, and one from the Arts America Program. Automation of book and periodical procurement will allow us to reduce support to USIS libraries by five positions.

Two other domestic positions, one each in the Overseas Areas and the Programs Bureau, will be eliminated.

Criteria Used to Establish Budget Priorities - The Agency operated under the following guidelines in establishing budget priorities:

- -- The highest cuts were to be applied to VOA and the Television and Film Service, reflecting guidance developed during the formulation of the President's budget for 1990.
- -- To the degree possible, our field operations should be protected.
- -- Several smaller elements should be exempt from the reduction, due to lack of resource flexibility.

The final reductions reflect this guidance. Overall, the overseas missions are reduced by an average of 1.1 percent from a current services level; the Voice of America, 3.2 percent; the Television and Film Service, 7.7 percent; and the other domestic bureaus by 2.9 percent (Educational and Cultural Affairs), 2.7 percent (Programs Bureau), and 2.3 percent (Agency Direction and Management).

Personal Services Contractors

QUESTION:

How many people does USIA now employ under personal service contracts? How many of these are retired USIA employees? What types of services are being procured under personal service contracts?

ANSWER:

USIA has personal services contracts with 22 foreign nationals for employment within the United States. Five additional personal services contracts are pending. All of the contractors are international radio broadcasters for the Voice of America. None of them are retired USIA employees.

In addition, the Agency issues purchase orders for specific specialized services or products that are not readily attainable through, or available from, regular employees, or that are not needed on a frequent enough basis to hire a full time employee. These include photographers, artwork designers, stringers, commentators, correspondents, translators, and similar services. VOA uses talent vendors to fulfill programming needs during evenings and weekends, for staff positions which are temporarily vacant, and to replace staff on leave on short-term notice.

In FY 1989, USIA utilized the services of 1,397 individuals through purchase orders for the period October 1, 1988 through April 24, 1989. Of these, 35 are former USIA employees.

Grievance Cases

QUESTION:

How many active grievance cases are pending at USIA? What is the nature of these grievances? How many cases are under litigation? What is the estimated USIA legal cost associated with these cases under litigation? What would you estimate is the cost in terms of lost staff time, legal, etc., to resolve grievances? Have you undertaken any studies to determine if you have some systematic problems that need to be corrected?

ANSWER:

There are thirty-two active grievance cases pending at USIA, of which fifteen are in litigation (three in court and two in arbitration.) The volume has increased significantly in recent years, stemming mostly from the requirement in both Foreign Service and Civil Service personnel legislation that performance appraisals be given significant weight in making other personnel decisions. Grievances in this area focus on the integrity of appraisal reports themselves and/or their impact on performance awards, tenuring, promotions, limited career extensions, and retirement/separation for poor performance or expiration of time-in-class. Other grievances involve such subjects as disciplinary actions, merit promotion, wrongful denial of security clearance, salary schedules, work assignments, and housing or moving allowances.

It is clear that the investment of staff resources is costly--USIA managers, employees, personnel specialists and attorneys; Department of Justice attorneys, when cases go to court; and paid arbitrators, transcribers, etc. While we do not have detailed records, we would offer the following very rough estimate of costs to USIA in 1988:

USIA Staff Attorneys (1.5 staff years at $60,000 each)	$ 90,000
Non-Legal Staff Costs (60 grievances at $3,500 each)	210,000
TOTAL	$300,000

We hope that enhanced training will help supervisors avoid some of the more common procedural errors in such areas as performance appraisal, which provide grounds for grievances. However, as long as the law requires that appraisals serve as a major factor in determining tenure, pay, awards, and career advancement, we can expect employees to seek redress through the avenues provided by law and negotiated agreement. At the same time, the Agency will continue seeking to resolve grievances at the lowest level possible and to thus avoid the high costs to both sides of taking appeals to third party fora.

Status of Hartman vs. Wick

QUESTION:

In 1984, the court ruled against USIA in a suit alleging hiring discrimination against women. Have you settled the case? What will be the cost to settle the case?

ANSWER:

In November 1984, the United States District Court for the District of Columbia found the Agency liable for discriminating against women in hiring in six specific job categories, encompassing both the civil and foreign service, between October 1974 and November 1984. It had been agreed earlier that, in the event of a liability finding, the remedial phase of the case would be postponed until a later date.

In January 1987, a second trial was held addressing the remedial issues. One year later (January 1988), the Court issued its opinion and remedial order, which the Agency has been in the process of implementing ever since. This order included such directives as: Agency publication of a Public Notice in numerous specified publications; certified mailing of the Public Notice to all current female employees, purchase order vendors, former applicants for employment and current applicants for employment; posting of the Public Notice at Agency headquarters and through OPM, and creation of a rank-order list of applicants to the Foreign Service based upon written examination scores. Recipients of the Public Notice have been informed that, to the extent they feel they may be eligible for relief, they have until July 15, 1989 to file claim forms with plaintiffs' counsel.

Thus far, the Agency has spent close to one million dollars ($1,000,000) implementing the Court's remedial order alone. Once the number of claimants is known, the Court will be in a position to determine the specific avenue of relief (such as an individualized hearing or trial).

At this time, there is no way to predict reliably either how much longer the case will be pending or what the final cost will be.

Wage Scale Increases for Foreign National Employees

QUESTION:

What is the wage scale increase for your foreign national employees? Is the percentage the same for all posts? Has USIA set up adequate financial reserves to pay the retirement or severance benefits for its foreign national employees?

ANSWER:

The Agency is requesting an increase of $5,427,621 for foreign national wage scale increases in 1990. This increase will provide $2,378,458 to annualize wage increases authorized at various times during 1989 for the foreign nationals employed by USIA at its posts, VOA relay stations, and correspondent bureaus abroad. It will also provide $3,049,163 to meet foreign national wage increases expected to be authorized in 1990 in various countries to permit the United States to maintain comparability with prevailing wage scales in these areas, as determined by Department of State surveys.

Wage scale increases vary widely at different locations throughout the world. However, we calculate that the Agency will experience a composite increase of about 8.1 percent.

The Agency does not set up reserves for retirement or severance benefits for its foreign national employees. Rather, these costs are treated as built-in requirements and are funded as necessary each year to cover those employees who retire or who are involuntarily separated due to budget cuts.

QUESTION:

What is the purpose of the $1 million request for radio installations shown on page 17-4 of your justification?

ANSWER:

The Department of State provides administrative support services for USIA's and other agencies' operations overseas. The Department is reimbursed for the distributed administrative support (DAS) portion of these services by participating agencies under the Foreign Affairs Administrative Support System (FAAS). The $1 million request in FY 1990 is for the Voice of America's share of this reimbursement including $632,000 for radio relay stations and monitors, and $404,000 for radio correspondents and program center.

The administrative support services provided by the Department include personnel services, budget and fiscal services, general operating services, communication services, security services, health services and automated data processing services.

QUESTION:

What is the criteria for establishing and maintaining the American Centers? What is the total amount of this request devoted to operating the American Centers?

ANSWER:

A principal role of the American Center library in USIS programs abroad is to build up, through sustained interaction with its users, an element within the local public which is better informed about the United States, more familiar with American cultural, social, and political processes, and -- it is to be expected -- more favorably disposed toward the United States as a country and more receptive to presentation of its foreign policy issues and concerns as a society than would otherwise be the case.

In determining whether a library should be established or a given library program is meeting acceptable standards of performance, a set of interrelated judgments is needed concerning its rationale, planning, accomplishments, and consonance with the Agency's overall objectives. Questions to be answered in making these judgments are:

-- Is the center library program based on a sound rationale in terms of the contribution it can make as one among several programs at the post?

-- Are the post and other concerned elements prepared to support both the initial investment and the ongoing expenses the center entails?

-- Do the post's plans stem from a perceptive analysis of the local setting and the appropriate audience for the center?

-- Are the operational objectives appropriate to the local political climate?

The 1990 estimate for Agency worldwide library activities is $37.8 million.

QUESTION:

How much of this budget request is earmarked for English language training? Is this training mostly in the less developed countries? In countries where the training is given, how intensive is English taught in the countries' own educational systems?

ANSWER:

The 1990 estimate for the Agency's worldwide English Language Program activities is $5.7 million. This effort is concentrated in less developed countries where host governments have fewer resources to devote to English teaching, where the need for our expertise is great, and where overall Agency priorities and objectives suggest that our limited resources should be spent. In many of these countries, national systems have failed to meet the English language needs of their students adequately. Classes are often overcrowded, teachers undertrained and materials scarce, so that individuals must often seek supplementary language instruction outside the state system. Although most of USIA's efforts are concentrated on teacher training, materials support, and working with educational officials, in those countries where we are supporting direct English teaching efforts, the large numbers of students enrolled in our programs attest to the low level of instruction in state systems.

Statement of the National Federation of Federal Employees Local 1418

QUESTION:

I will make part of the record a statement from the National Federation of Federal Employees Local 1418. The statement indicates that the estimated cost of the network control center has "rocketed" from the 1983 estimate of $2,600,000 to $17,700,000. Is that correct, and if so why? Are we betting on a lot of unproven technology for something that the NFFE says "is essentially an overblown data collection facility?"

ANSWER:

Original cost estimates of the network control center -- or World Operations Command and Control facility (WOCC) -- were $17.7 million, not $2.6 million. However, the full system will not be built due to budget constraints. Currently projected costs total $8.8 million.

The facility, which is for central control and management of overseas stations, is now operating at VOA headquarters. Pilot installation of associated computer and electronic equipment is complete, and related software development nearly so. Central satellite communications facilities and an earth station have been installed and are operational at VOA headquarters and at the Greenville relay station. We believe that the facility will be a valuable addition to the overall modernization effort, and that it is essential to the sound management of a worldwide broadcasting network.

QUESTION:

It sounds like VOA is using a Florida real estate agent as the local says that new the site in Morocco is located on a flood plain and is expected to be flooded at certain times of the year? If that is so, why are we using such a site?

ANSWER:

It is true that the Morocco site is located in a flood plain. However, during site preparation, the level of the site was built up to a level above the flood area, which we believe will ensure the structural integrity of the site.

This low location has an offsetting advantage. Propagation characteristics of our signal are better over water, and the site, located on the coast, will provide a better signal to locations in Eastern and Central Europe.

(The statement follows:)

January 27, 1989

The Honorable Ernest F. Hollings
Chairman,
Commerce, Justice, State and the Judiciary Subcommittee
Senate Appropriations Committee
United States Senate
Washington, DC. 20510

Dear Mr. Chairman:

Enclosed is a Statement For The Record which we would like to submit in conjunction with hearings before your committee pertaining to the Voice of America.

This year's Statement is slightly over 30 pages in length. It could easily have been longer. In the three years in which we have been providing our views, we have seen the overall conditions which have been the focus of effort deteriorate with increased momentum.

Perhaps more than any other point, we have developed the view that VOA officials have created problems which they cannot resolve. Furthermore, we would suggest, strongly, that no confidence be placed in these officials to correct or resolve any of the major problems highlighted in the attached Statement on their own or without external assistance of some form.

We believe that we have made a legitimate case for an organizational overhaul of VOA by whatever appropriate mechanisms exist for such an undertaking. We hope that the Congress and the Administration might agree on a non-partisan effort to put an end to the decline of VOA if for no reason other than to determine what VOA's role should be in public diplomacy and to restore some measure of internal and external standards and values in its operations.

In the National and Public Interest, I remain

Respectfully yours,

Gary A. Marco

Gary A. Marco
President, NFFE Local 1418
101 Skyhill Road
201
Alexandria, VA. 22314

Statement For The Record

Assessment of Voice of America Operations

January 1989

I. Introduction And Overview

Mr. Chairman:

The Voice of America has been the international shortwave radio medium of the United States Government for well over 45 years. From World War II to the present, the Voice of America has broadcast programs in many languages, projecting American political views and American culture to a diverse international audience which, at times, can be interested in or opposed to the American experience, its government or its views.

The formative years of VOA were rooted in the Cold War, the economic, military and ideological confrontation between Western democracy and international marxism/communism. This global confrontation has produced mixed results. While the United States and its Allies have blunted the advance of international marxism in Western Europe, the Soviet Union or its surrogates have maintained control over Eastern Europe, most of Southeast Asia, parts of Africa, the Middle East and Latin America.

The Voice of America has been an active participant in the successes and the failures of American foreign policy. While it is difficult to measure the significance of the VOA role, the historical record would probably point out that the Voice of America provided its listeners with a mixed message: some of it hopeful, some of it stridently anti-communist in support of American foreign policy goals.

By the 1980s, it became readily apparent that VOA was showing the wear and tear of its service. The Reagan Administration, recognizing the value of VOA as an instrument of foreign policy, embarked upon a bold initiative to revitalize VOA technical facilities and increase the number of language services and broadcast hours. The blueprint for this massive revitalization of VOA was a directive from the National Security Council (NSDD-45) mandating technical modernization and program expansion by the end of the second Reagan Administration and/or the end of Fiscal Year 1989.

As we enter the year 1989, the effort to revitalize VOA, following the NSC mandate, has encountered serious difficulties. Indeed, it may be stated that the modernization/expansion effort uncovered some significant problems within the Voice of America affecting a number of aspects of the Agency's operations. While it may be premature to judge how far-reaching these problems may be, their existence jeopardizes the future of the Agency and its impact on its foreign audience.

The focus of this Statement For The Record rests upon several major areas of VOA operations, including:

1. The technical modernization of VOA facilities;

2. The nature, character and substance of VOA programming;

3. Internal VOA personnel practices;

4. The case for a VOA reorganization.

As in previous presentations, conclusions, recommendations and a summary of views will be included.

We are again grateful for the opportunity to present our views before Members of Congress overseeing the operations of the Voice of America. We believe that it is in the National and Public Interest that Members of Congress be afforded the opportunity to hear the views of the VOA professional staff in order to mold a complete picture of the operations and direction of this agency, and to exercise informed decisionmaking with regard to matters petaining to it.

While this is essentially a presentation of NFFE Local 1418, we are deeply grateful to numerous individuals among the rest of the VOA workforce who have provided their candor, wisdom, experience and insight with regard to the issues confronting VOA as it rests on the verge of a new decade..that of the 1990s.

NFFE Local 1418 represents the Radio Broadcast Technicians at the Voice of America.

II. The VOA Modernization Project

The effort to modernize VOA's technical facilities has been a major focal point of our reports in the past and continues to be so in 1989.

As we enter into another new year, based upon our observations, we believe that the modernization effort is both an international embarassment and a qualified failure.

The timetable mandated by NSDD-45 in July, 1982 for completion of the modernization program (FY-89) will not be met.

In looking back over the process up to this point, we believe the critical error in the execution of the modernization effort was to allow the Agency to approach modernization in what has the appearance of being a piecemeal approach. Rather than giving VOA a lump sum in a modernization appropriation, it would have been advisable, particularly in the early stages of the effort, to allocate funds on a project-specific basis, thus placing pressure on the Agency to develop a system of priorities with regard to specific modernization projects and affording Congressional staff to better monitor the progress and costs of the effort.

It is our considered belief that the Congress perhaps placed too much trust in the presumed expertise of those making a case for the approach VOA would use for modernization.

Without qualification, we believe that for too long, Agency officials have approached each successive Congressional hearing which dealt with modernization on the basis of telling Congressional representatives what they may have wanted to hear, rather than what may in fact have been the more practical reality of the size, scope and complexity of the modernization undertaking. Worse, it is possible that Agency officials actually believed in what could only be categorized as a "best-case scenario" for the modernization effort, particularly since it appears that difficulties were incurred almost from the beginning in virtually every aspect of the modernization process.

What we are left with at present is a modernization effort which has taken on a life of its own in the sense that there appears to be no end in sight for completion of certain projects, or indefinite postponements of certain aspects of the effort. In addition, projects which have been "completed" have encountered shortcomings which require remedial action to ensure that specific operational responsibilities can be carried out.

What follows is an overview of various projects: completed, underway or delayed. In making this presentation we take the view that the VOA modernization effort has cost far in excess of what was originally anticipated, even if inflation is taken into consideration. Where possible we will endeavor to use estimated dollar amounts as a guideline to measure costs.

A. The Network Control Center

In our view one of the more controversial (and costly) modernization projects involves the Network Control Center (NCC).

In the early stages of the modernization effort, attention was given to development of a centralized system of controlling the worldwide array of VOA transmitters and relay stations, based at the Washington Headquarters facility.

In the December, 1986 issue of USIA World, Ken Yates, then a special assistant to the Deputy Director for Modernization, wrote an article entitled "Saying It Better," outlining what would be the Agency's conceptualization of its Network Control Center. The following are what we believe to be the significant points which have evolved into controversy, quoting from the Yates article:

"...At the heart of the modernized Voice will be a control system which will monitor the performance of the network, making needed changes in antenna configurations, broadcast power, and transmission characteristics of relay stations around the world. At present, adjustments are largely done manually, with decisions based on monitoring reports and other information on signal strength gathered over a period of months or years. The new system is intended to provide 'real-time' information from a larger, worldwide monitoring system and from state-of-the-art computer models used to predict broadcast signal strengths and coverage patterns.

"The new Worldwide Operations and Control Center in Washington wil 'tune' the full network to insure that we are meeting our program goals. Fundamental to this capability will be a new generation of 'steerable,' high-gain antennas which will point a signal in the best possible direction and give us the best possible signal using the least amount of power...Such new antennas are still in the development stage, but show good promise.

"By using flexible antennas and a central control facility, in times of crisis we will be able to quickly concentrate our resources on a particular region with a minimum of disruption to other services. This flexibility can also be used in the event of a loss of service from any one of the relay sites so as to permit uninterrupted programming to reach an affected target area.

"Such a high quality and flexible system will be expensive..."

In our view, the World Operations Control Center, as part of the Network Control Center, represents a typical VOA pet project which, on paper and in theory sounds terrific, but in reality is likely to be little more than an expensive theoretical concept which will take years to develop and implement throughout the entire VOA network.

The Network Control Center is heavily reliant upon a certain level of technology which is in the developmental stage, non-existent or so prohibitively costly as to be fiscally out of reach.

For example, adjustments to transmitters will continue to rely upon on-site personnel should commands transmitted by computer, via satellite fail to execute. Without the on-site personnel to make these adjustments, it is unlikely that transmission characteristics will be correct. The conception offered for the NCC project also does not take into consideration weather conditions and equipment problems existent at the on-site transmitter locations.

While the new system is "intended" to provide real-time information, this too remains largely impractical. By its very nature, it would be difficult for the system to identify a problem and correct it "instantaneously." The transmission of computer commands back and forth between the Washington Headquarters facility and a remote site location would slow the entire process down. In order to maximize the likelihood of success, transmissions must take place within a certain frequency range. The VOA Network Control Center system will operate in what is known as the KU frequency band, which, for the type of communications required by the system, appears inadequate and subject to signal interference, and by extension, interruption of program service.

Much was made of using so-called "steerable" antennas as being a critical element in this system. By the admission of the author of this article, such technology is "still in the development stage, but show(s) good promise." Again, VOA, which does not develop technology but relies upon it being developed by others, is making a major, prohibitively costly committment to something still in the developmental stage.

The ability to concentrate VOA resources in a time of crisis, as alluded to by the author may be the stuff by which good espionage or science fiction novels are made, but in reality, this system, as the existing system, is vulnerable to jamming at the transmission level or other electronic countermeasures at the satellite level. In a worst case scenario, some overseas transmission sites may also be vulnerable to terrorist or more conventional attack.

Looking at the cost of this Network Control Center, it will be years before the system is completed. Each day that passes by makes the ultimate cost of the system virtually inestimable. The further from the Washington Headquarters facility to each specific transmission site, the greater the cost and the greater degree of technical difficulty. The longer the delay in completing each transmission site, the greater the ultimate cost.

In documentation contained in a March, 1988 USIA Office of Inspector General audit of the VOA relay station modernization program, cost comparisons already show how the Network Control Center project alone is extremely costly.

In 1983, the estimated cost for the Network Control Center (NCC) was tabulated at $2.6 million dollars.

By 1987, the estimated cost for the NCC rocketed to just under $17.7 million dollars, almost a seven-fold increase in a four-year period.

As of the end of 1987, the total amount of funds obligated for the NCC amounted to slightly over $5.0 million dollars.

While VOA officials would like the Congress and the American taxpayer to believe it has created a technological breakthrough, the fact of the matter remains that the Network Control Center is essentially an overblown data collection facility.

In order to mask this fact, VOA officials inserted the Network Control Center into the technical operations of the Agency, taking job functions already performed by the Master Control element and turning these functions over to the Network Control Center. By doing so, certain critical functions were placed in the hands of individuals with only a rudimentary understanding of the technical aspects of VOA operations. Such functions include interfacing with the technical VOA staffs at the various transmitter sites and relay stations, the VOA Master Control staff and the various communications vendors who supply VOA with broadcast audio services (such as broadcast lines, microwave and satellite circuits). The lack of knowledge and expertise on the part of the Network Control Center and their inability to communicate in the lexicon of the broadcasting trade have led to a number of program interruptions. The situation is not likely to improve in the forseeable future; and the blame for creating the breakdown of uninterrupted program service by placing inexperienced individuals into a critical phase of the broadcasting process lies squarely with Agency officials.

As VOA officials experiment with the limits of known technology, the costs incurred by the taxpayer grow larger and the successful completion of this system lurks well off the horizon if it exists at all.

B. Master Control:

There is not much to report in the way of new information with regard to the Master Control facility. It is essentially a "completed" project. We qualify the concept of completeness by virtue of the tendency of Agency officials to add onto an existing system those things which may have been left out of the design process.

In terms of Master Control, the principal add-ons would most likely be in the form of automation equipment to assist the technicians in the Master Control facility. One such system has been put in place which essentially controls the program switching between VOA studios and the various outputs from Master Control, through the Network Control Center and out to the various lines and circuits to the transmitter sites and relay stations.

Much to our surprise, the system works fairly reliably, although it has infrequently "crashed," causing some disruption of programming while the Master Control technicians restore service. Periodically, the Agency has intimated its intention to integrate the Master Control facility with the clerical support element known as Traffic, which is responsible for coordinating program schedules, studio designations for on-air programs and off-air production assignments. The motivating factor at play here appears to be the belief that this process would facilitate insertions and deletions into the Master Control operating schedule. As far as it goes, this can be accepted as true. However, the crucial consideration remains the likelihood of disruptions caused by incorrect data entries into the system and the amount of time required to determine the nature of the error and its impact on program service.

Like all other aspects of the modernization process, the integration of this system into the rest of the Master Control system is costly and time-consuming. Whether or not funding exists for this project has not been established at the time of our preparation for this report. The existence of the funding by no means assures that the project will be completed in a timely fashion within the "estimated" cost which might be established for such a system.

Apart from any future improvements to the new Master Control facility, as constructed the Master Control element represents an upgrade over the old Master Control. In some instances it is not as operationally flexible as the old Master Control. Yet, while we would stop short of calling it a major technological breakthrough for VOA at this time, it does operate and function with reliability comparable to the old Master Control.

C. VOA Studios:

One of the major focuses of our examination of the modernization effort has been the studio renovation project dealing with the original nineteen (19) VOA broadcast studios.

Work began on this project in April, 1987. At the time of the writing of this report (December, 1988) not one studio of the first phase of this project has yet to become operational.

As with other modernization projects, the Agency appears to have had unrealistic expectations as to the timeframe to get the studio renovation project moving. In addition, it appears that the demolition and renovation work that was essentially not related to the installation of the broadcast equipment took far longer than anticipated or planned.

It is obvious from the quality of the decor that the Agency spent considerable sums of money on the studios renovated thus far. Whether all of the studios required "showpiece treatment" is debatable. Stylistic lighting and parqueted flooring in the control rooms is not necessarily desirable. For example, should a spotlight burn out in the new lighting scheme, the effects on the room are far greater than one fluorescent tube burning out in a section of fluorescent lights. As for the parquet floors, the requirements for their upkeep is far more costly than other flooring possibilities, and with intense, concentrated and protracted use, such floors will show wear more quickly than other floor treatments.

The Agency also spent considerable funds for the construction of custom made announcer podiums, similar to those in the so-called "Hamilton" studios located on the Third Floor of the VOA Headquarters facility.

In any event, it is our view that far more money was expended than was necessary with regard to wall, lighting and floor treatments in these studios. In addition, lighting which is controlled by dimming devices may also cause interference within the studio electrical system.

In September, 1988 equipment which was to be installed in the renovated studios was delivered to the VOA Headquarters Building. In the course of one weekend, the contractor responsible for the installation of the broadcast equipment uncrated and tested each piece of equipment before it was moved into the new studios. Those of us on duty over the weekend on which this occurred were impressed with the procedures demonstrated by the contractor. These actions demonstrated what appeared to be some foresight in the installation process: determining that the equipment to be installed at least appeared to be functional before being mounted into place in each respective studio.

The next stage of the process was the complicated task of wiring the various pieces of equipment into an integrated whole, functioning through each studio's audio console. This is a meticulous process and cannot be understated in terms of its importance, not only in terms of proper wiring, but also with regard to documentation accurately reflecting the layout of the wiring.

From these early steps in the broadcast installation process, many of us thought that the project would pick up some momentum. Indeed, at one point, memoranda were circulated which indicated the anticipation that VOA radio broadcast technicians would begin training and orientation in the newly renovated studios on or about October 1, 1988.

The October date came and went, as did anticipation that at least one or two studios would be operational in time to showpiece the new construction during VOA's U.S. Presidential Election coverage. That also did not materialize.

As this process was unfolding, several individuals from the Technical Support Branch of the Operations Management Division (operational groups responsible for operating and maintaining these studios) toured the renovated facilities. This tour prompted one technical manager to write a memorandum concerning what appeared to be possible problems which might be encountered "down the road," after the project was completed. This memorandum prompted an angry rebuke from another Agency manager responsible for oversight on this project. The contents of the memoranda aside, it became readily apparent that certain VOA managers attached to the renovation of these studios made clear their sensitivities with regard to any discussion of possible shortcomings in the equipment purchased, how it was arrayed in the renovated studios or the possibility of technical problems which might be inherent in the design.

Such sensitivities make it extremely difficult to get a straight answer from Agency officials as to why the delay in making these studios operational.

From various secondary sources, information leads us to believe that proof of performance tests were begun on the equipment in the renovated studios. Repetitive performance deficiencies appear to have caused these tests to be halted while repairs or corrections to the equipment were undertaken.

In addition, the design of the renovated studios places a heavy dependence upon delicately balanced enivronmental controls adjusting temperature and air flow to cool the technical equipment. It appears that some of the equipment (cartridge players) is failing due to heat sensitivity.

Like the "Hamilton studios," the Agency has again attempted to develop a "prototype" intercom system between the studio and control room. "Prototype" designs have been proven to be unreliable in past broadcast construction efforts, hampering effective communication between studio and control room personnel.

Since the studios are not operational at the time of this writing (December, 1988), we cannot comment with regard to the overall quality and reliability of the equipment being installed in the renovated studios. Instead, our focus is on time and money.

As noted, Agency officials early on in the project stated that this would be a 20-month project divided into two, equal segments. Thus far, the first segment alone has taken 20 months and the studios have yet to be placed on line.

Before work can be undertaken on the second portion of the studio renovation, the new studios must go through proof of performance tests and a trial period of operation in order to determine their reliability over a protracted, use-intensive period of time. Should the studios designated for renovation be taken out of service prematurely (i.e., failures in the new studios taking them out of service), the Agency would find itself with a shortage of studios, which in turn could seriously jeopardize the ability of the Agency to carry out its broadcast operations.

It is not inconceivable that it will be many more months before the "19 studio renovation project" is finally completed. Indeed, it is even possible that the Agency may consider gutting the remaining 10 original studios and using that space for other purposes, relying instead on modular studios to be located within the workspaces of the various language services.

According to an audit by the USIA Office of the Inspector General, the contractor on this project was responsible for providing a "Cure Notice" detailing how these delays were to be dealt with. It should also be examined as to whether or not costs associated with the prolonged nature of the first phase of this project have resulted in cost overruns, are being absorbed by the contractor and sub-contractors, and whether or not the delays associated with the first phase of this project have placed completion of the project in jeopardy.

Initially, the overall cost associated with the "19 Studio Renovation Project" was estimated at slightly over $6-million dollars, with the broadcast installation tabulated at approximately $3.0 million dollars. We have not been able to determine whether or not these figures have been revised.

We should also note that those of us who keep daily watch on the studio renovation project were more than surprised to see a picture in the December 19, 1988 issue of Broadcasting magazine depicting two members of the Hausa service in one of the newly renovated studios. In essence, the caption which accompanied the picture, said the studios were on-line and operational. Nothing could be further from the truth. A January 1, 1989 issue of Radio World also noted that the first phase of the studio renovation project was completed and operational. In both instances, the Agency deliberately misrepresented the status of the project to these trade publications, no doubt to deflect some of the criticism directed at the VOA studio renovation project.

D. Central Recording:

The modernization of the VOA Central Recording facility appears to be indefinitely delayed due to lack of funds. In its place, Agency managers have attempted what may be characterized as a "reorganization" of this facility in order to attempt greater efficiency in the operation.

This effort, predictably, has resulted in what we believe borders on chaos and inefficiency. In one instance, technicians manning certain operations of the Central Recording facility are made responsible for a number of separate operational functions spread across one-half of the workspace area.

In another instance, equipment was re-configured in such a fashion as to make a technicians responsible for over 40 reel-to-reel tape machines in a large, open space of the facility. The lack of uniformity in work distribution and the relocation of this equipment virtually into the middle of the Central Recording workspace has added to the volume of noise and confusion that now makes up a large part of this reconfiguration of Central Recording.

The VOA Central Recording facility in appearance and operation is the epitome of a jury-rigged system: poor planning creating chaos in the workplace and generating a great deal of ill-will between the workforce and those who claim to manage the facility. The only thing which can be said of the present-day Central Recording is that, in our view, as VOA technical shortcomings go, this degree of failure did not cost millions of dollars to perpetrate.

In a macabre fashion, Agency managers responsible for Central Recording have made their efforts in the name of greater efficiency virtually comical. In addition to creating turmoil by stop-gap equipment configurations, work procedures are changed without follow-up paperwork or new paperwork and procedures materialize literally overnight leaving the workforce ignorant of how to incorporate these new instructions into the old workplace.

Equipment deficiencies noted from previous reports remain essentially unchanged (i.e., the Accurate Sound duplication equipment and the IGM automation system). What has changed is that equipment problems (virtually throughout all VOA technical facilities) have become institutionalized and considered "normal," in our judgement, based upon our first-hand experience.

E. Technical Support:

The principal focus in past reports from the Technical Support Branch has been the VOA Voyager Van. The Agency, with financial woes pressing in, has been surprisingly circumspect in the use of the Van. We do not believe that the diminished use of the Van has substantively impacted upon VOA programming, which in turn leads us to question its relative value to VOA in the first place.

In 1989, our attention is directed to what we would call a "paralysis by office automation." Technical Support managers have placed a heavy emphasis on automated bookkeeping. In practical terms, work procedures structured around this automation have reduced the response time formerly the hallmark of the Technical Support Branch. Prior to 1985, Technical Support response time to equipment problems was prompt and effective. In the present-day VOA environment, delays in effecting repairs on malfunctioning equipment are prolonged often over several days. In part, this is also a reflection of the concentrated use of VOA studios necessitated by the studio renovation project and its attendant delays. However, the bulk of the problem lies with work procedures built around several different computer systems.

Maintaining inventory and spare parts is another serious problem within the Technical Support Branch. As noted in the past, by virtue of the wide variety of equipment used by VOA in its technical operations, a correspondingly large amount of spare parts are required to maintain the Agency's operating capacity. More often than not, spare parts are not available and equipment must be either taken out of service, or other equipment units cannibalized in order to keep technical equipment functioning. There is no indication that this mode of service operation is likely to change for the forseeable future.

Lack of standardization of VOA technical equipment will not be relieved by the modernization program. If anything, the divergence of equipment types will expand by virtue of the new equipment types which will have been added as part of the modernization program at the VOA Headquarters facility. Lack of standardization is costly in both the short and the long term.

F. VOA Transmitters:

NFFE Local 1418 is not directly involved in transmitter site operations. However, from discussions and conversations with individuals who are, and from published reports in broadcasting trade publications and other sources, we believe that we might be able to offer some insight into the status of modernization efforts in this area.

Without overstating the situation, we believe that modernization efforts with respect to domestic and overseas transmitter sites have encountered problems even more serious than those encountered as part of the modernization activity at the Washington Headquarters facility.

Generally, the overall transmitter modernization program is, in our opinion, hopelessly off schedule to the point of creating a schedule for renovation irrelevant and useless.

In terms of the domestic sites, the Greenville, North Carolina site is coping with PCB contaminants. There have also been unconfirmed reports that the PCBs have leached into the soil to contaminate the local water supply. In addition to the PCB problem, site personnel must contend with various "prototype" transmitters at the facility, each with different performance specifications and parts requirements.

In California, the Dixon relay station has been closed following some renovation expenditures and the apparent non-use of the antenna and transmitter facilities located at that site.

Overseas, the situation shows more difficulty.

The general situation shows that: temporary medium wave stations are operational in Belize, Antigua and Costa Rica; work continues on the Thailand and Morocco transmitter sites and refurbishment of the Greenville and Delano sites is not expected to begin until 1992. It appears that approximately $360 million dollars has been thus far obligated in a construction/renovation effort once estimated to cost the American taxpayer approximately $1.8 billion dollars. At present, there appears an indication that the Office of Management and Budget is considering a scaled-back effort costing approximately $600 million dollars (source: Broadcasting magazine, October 24, 1988).

The same article noted that Agency sources cited serious geographic problems at the Tangier, Morocco site (located on a flood plain and, as expected, flooded at certain times of the year) and reliance upon new construction under the direction of the Board for International Broadcasting (Radio Free Europe/Radio Liberty) in the Negev Desert in Israel.

Furthermore, there will be reliance upon leased transmitters belonging to the West German Government.

By virtue of the size and scope of the relay station modernization program, we refer you to the USIA/OIG Audit Report of March 25, 1988 for a detailed analysis (Report Number A-88-04).

VOA modernization also includes the broad category of office automation. VOA computer services have expanded quantitatively during the 1980s. At one point, VOA was given high priority to be modernized with regard to computer application to the VOA mission. The Agency has since been dropped from the priority status. However, the proliferation of a number of different computer systems took place in the interim. Just how much of the office automation effort is necessary and how much is "fat" is beyond the scope of our efforts in this report, although we believe this aspect of VOA modernization warrants attention. Since there are several different systems in place, we are left with the question of whether or not one system would have been adequate, and if not, why not. In our experience, we have seen systems with trade or manufacturing names of SNAP, WICAT and others in place and operational.

While we have separate comments to make with regard to the VOA modernization effort in the closing portions of this report, we believe that it may be appropriate to introduce at least one observation at this point in this document:

It is our considered judgment that the VOA modernization program, in all its component parts, is a testament to the struggle between expectations, capabilities and execution.

In terms of expectations, clearly there was a belief existent in several different quarters of government (USIA/VOA, the White House, the NSC, and the Congress) at the outset of the first term of the Reagan Administration that given adequate fiscal support, the overdue modernization effort could be accomplished within a projected timeframe. Much to the credit of the principals involved, the mandate for this action was assembled and substantial funding provided. The expectations of those advocating this action were thus raised to new heights.

The beginning of what would ultimately prove to be the malaise that the effort now finds itself mired in came within the realm of capabilities. Such a monumental undertaking required a broad scope of expertise, some of which was not readily available within VOA. Thus, outside consultants were contracted to provide the feasibility and operational studies required of the Agency. The size of the VOA Office of Engineering was expanded as well to provide in-house resources.

At some point in this process, we believe that the modernization effort began to take a turn away from modernization and move toward indulgence in fanciful visions of the future. In our view, projects were embarked upon (such as the Network Control Center) which, in the immediate sense, do not materially provide VOA with any sort of technical edge, are prohibitively costly, and will require years to develop and successfully deploy.

The cycle for a serious shortcoming of the effort thus became complete in the execution phase: virtually every modernization project is unfinished as the timeframe of the NSC mandate (NSDD-45) winds down. In some respects, it might be inferred that being half-or-unfinished could be worse than not having started at all.

Thus, we conclude that the "window of opportunity" for VOA modernization has closed and that what remains is essentially a salvage operation; in essence, to maintain as much servicability as possible in the existing equipment, while, with limited funds, maintain those modernization projects which are underway.

We should also note that, in some broad, overall respects, the VOA dilemma is not unlike that involving the development, acquisition and deployment of weapons systems encountered by the Department of Defense. Indeed, some individuals involved in the early stages of VOA modernization appear to have had some previous experience along those lines and projected the DOD approach into the VOA modernization effort.

At a cost of many millions of dollars, we are presently left with a nmodernization effort which is incomplete and will remain so for well into the foreseeable future. In addition, some of the equipment purchased doesn't work well and requires more intenseive mainternance than the old equipment it replaced.

III. Personnel Practices

From daily, firsthand experience, we believe that we can say, without reservation, that the Voice of America has embraced a policy and philosophy of anti-employee animus. This anti-employee animus manifests itself in different ways. Cumulatively, the thrust of this policy is to deny employee rights through various forms of unwarranted personnel actions and to create an environment so negative to long-term career employment as to develop accelerated staff turnover from among the senior, professional staff, thus bringing in young and inexperienced employees at lower pay rates who are easily manipulated by various personnel practices and techniques.

For much of 1988, a team of auditors and/or investigators from the General Accounting Office interviewed an undetermined number of Agency employees regarding VOA personnel practices. What originally started out as a two-man GAO team eventually grew to four individuals with computer support. What was thought to be a short stay grew to just over eight months.

Presently, both Agency managers and employees are anxiously awaiting the publication of the GAO findings for obviously different reasons.

Based upon our experience, we believe that the philosophy of anti-employee animus is being orchestrated by the VOA Office of Personnel, through its Labor and Employee Relations Division, with the concurrence of senior VOA managers. By virtue of the fact that VOA is a textbook example of "networking" among its managerial staff, the scope of the problem is Agency-wide, permeated virtually to the first-line supervisory level.

Some examples of the questionnable personnel practices are:

---Pre-selection of candidates for certain positions/promotions. For example, an Executive Producer in one language element who is not fluent in the languages of the respective division and thus cannot understand program content or make recommendations as to program content.

---Preferential work schedules being created for purchase order employees at the expense of permanent staff employees;

---Cases involving alleged racial discrimination;

---Cases involving alleged sex discrimination;

---Supervisory personnel with family members under their supervision;

---Serious concerns regarding the manner in which certain individuals have been promoted to various positions despite the appearance of insufficient qualifications;

---Unprecedented labor unrest with organized employee bargaining units resulting in major litigations.

These examples hardly scratch the surface of what was apparently presented to the GAO team over an eight-month period.

The Voice of America has a well-entrenched network of mid-level managers (i.e., Division chiefs, their deputies and supervisors). While Administrations and VOA directors come and go, these individuals remain generally in place. Over the years, these individuals have successfully maintained their power in the organization based upon their ability to insulate the VOA Director from the general workforce, thus enabling them to create and portray VOA in their own image and manipulate the Director in such a fashion as to gain endorsements for various mid-level management initiatives, some of which are aimed at controlling or intimidating the workforce.

These mid-level officials have enjoyed some measure of success. They have been able to create an environment which stifles criticism of questionable actions on the part of the Agency and allows for abuses of the staff. At the same time, purveyors of this management approach have sought out individuals within the workforce of like mind and spirit in order to perpetuate their philosophy indefinitely.

Anti-employee animus has the appearance, if not the substance, of a very deep-rooted obsession within managerial circles. In order to pursue its campaign of anti-employee animus in one instance, the Agency contracted with a private sector law firm to pursue a case involving a dispute between the Agency and some of its employees. Over $77-thousand dollars in public funds were expended to pursue this case before the matter was turned over to the Agency's own General Counsel staff of attorneys. The matter is now before the U.S. Court of Appeals.

The Voice of America was also the respondent in a class action case of sex discrimination involving over 4,000 female applicants for positions within the Agency going over a 10-year period.

The year 1988, we believe, marked a turning point for Agency employees, in the sense that tensions and discontent over management abuses of the staff reached a pressure point. Employees have become intolerant of theses abuses and have reached out to Members of Congress, the GAO and the press for remedy of a situation which cannot be rectified within the VOA.

Indeed, it is a situation which, from all appearances, is out of control, the consequences of which impact upon virtually every aspect of VOA operations.

Clearly, VOA managers, particularly in the Office of Personnel, have created and encouraged an oligarchical and stratified "class" structuce at the Voice of America. Symbolically, the Agency's personnel practices are more representative of the totalitarian regimes VOA broadcasts are targeted to, rather than an institution responsible for representing the principles of American democracy.

This tone and character to the Agency is nowhere more typified in the extracirricular activities indulged in by the Office of Personnel. The most noteworthy in 1988 was a so-called "End of Fiscal Year Party" conducted during regular business hours on September 30, 1988. Sources familiar with this event noted that it was "by invitation only," and that some of the participants were dressed in formal evening attire. Some individuals paraded through VOA workspaces shouting "Happy New Year" to the bewilderment of Agency employees at their workstations.

Parties are not uncommon in any work environment. However, as we noted at the time of this "event," this particular party was inappropriate. The Voice of America is an Agency with a broad range of serious problems. Agency managers have already made program and language service cuts and indicate more are on the way. Many Agency employees wonder whether or not 1989 will bring furloughs and reductions-in-force, given what appears to be the inability on the part of Agency managers to manage VOA fiscal resources in such a manner as to ensure the continuation of its broadcast operations and the continued employment of the VOA staff elements.

Agency managers are responsible for setting the tone and character of the workplace. Among other shortcomings, the message from Agency managers to the workforce via this particular event is something symbolic of Nero's Rome.

Without question, the findings of the GAO audit are certain to have a critical bearing on the future course of the Voice of America. We are hopeful that this audit will support our views on the subject of personnel practices. If not, the unrestrained abuses will continue without abatement to the further detriment of the Agency and the general workforce.

Current personnel practices, in our view, have turned VOA into a classic textbook example of the type of practices which have denegrated the quality of the Federal Civil Service. System abuses by Agency managers have diminished the morale and productivity of the workforce, encouraged recruitment of individuals of lesser skills and expertise and have created an environment which, cumulatively, have made VOA a liability in the area of public diplomacy...all a consequence of an effort to crush any manifestation of employee rights in the workplace.

It should also be noted that the Agency is not above the use of strong-arm tactics. In the current furor over the introduction of certain broadcast operations techniques, the Agency made a serious effort in preventing various groups of employees from hearing a presentation of both the pros and cons of the issue.

Indeed, the Chief of VOA Labor and Employee Relations Division went so far as to remove an employee from a meeting after the employee had been granted permission by another management official to observe the proceedings.

The actions of Agency management in this matter alone suggest strongly that Agency officials are operating well outside the parameters of law, rule and regulation.

Indeed, Agency managers show an almost brazen disregard for not only law, rule and regulation, but also, established standards of conduct. An agency which discriminates against over 4-thousand female applicants over a 10-year period has some serious deficiencies. In this and other cases, it is more than likely that Agency officials involved in this and other cases are still in "responsible" positions. Again, the tone and character of VOA management demonstrates that without a sense of accountability and responsibility, VOA managers feel they have unrestricted latitude in their actions.

Corrupted by their venality and self-serving agendas, VOA managers have undermined the community of interests which once bonded the workforce and managers in a common effort to successfully execute the mission of the Voice of America. In areas such as modernization and programming, these shortcomings represent a very real threat to the long-term viability of VOA as an instrument of public diplomacy and any semblance of professional integrity within the international radio broadcasting fellowship.

IV. Programming Issues

VOA program content is a topic which stimulates diverse opinions regarding the nature of the Agency's mission within the context of responsible journalism. Our views are as follows:

We believe, strongly, that VOA programs must be hallmarks of credibility and integrity. We do not believe that current programming is reflective of compliance with the VOA Charter nor representative of a balanced view of American social, political and historical events. This concern is increasing and has been the subject of reportage in different media outlets in 1988.

In terms of VOA English language broadcasts, we believe that VOA coverage of major news events is good, within the context of a typical VOA hourly newscast (usually ten minutes in duration) or in the expanded news programs known as Newsline and World Report. These programs are fairly comprehensive, giving the listener a review of the major news events of the day.

Equally interesting to the VOA overseas audience are the numerous entertainment programs, principally built around American music forms. These programs, perhaps, generate the largest volume of listener interest and response, via the mail received by VOA.

The problem areas in VOA programming rest in the areas of the VOA editorials and the feature programs which deal with current events.

The VOA editorials are clearly identified as representing the views of the United States Government; and herein lies the rub. The views represented are those of the sitting Administration. In the minds of some Agency employees, these views are not necessarily representative of the views of the American people and thus not indicative of divergent views on a particular topic.

For example, a recent VOA editorial took the Soviet Union to task for its mining operations in Afghanistan. Clearly, these operations have taken a deadly toll on the Afghan civilian population. While true enough, such an editorial must be considered within the context of our own experience in the Vietnam War, thus leaving the views expressed in this editorial open to challenge on solid factual grounds; namely, that both the United States and the Soviet Union have bloodied civilian populations in pursuit and/or defense of their national interests. This is, by no means, one example taken out of context.

In terms of feature programming, particularly that which eminates from the Current Affairs Division, serious questions have arisen as to the apparent injection of ideological views which may be supportive of the then-sitting Administration's interpretation of individuals and events on the world scene. One or more "flaps" have arisen over programs which have dealt with such topics as Nelson Mandela and the apartheid movement in South Africa, and events and individuals involved in the Iran-Contra hearings and trial proceedings.

These and other issues were given treatment in recent publications. The Review of International Broadcasting published by Glenn Hauser in a recent edition published a story entitled "The Straight Story: VOA Under Reagan," a detailed indictment of program activities at the Voice of America in recent years. The Columbia Journalism Review in its November/December 1988 issue published a piece entitled "When the Voice of America Ignores its Charter," written by Ms. Carolyn Weaver, a part-time writer at VOA and free-lance journalist. Both pieces address programming issues in much greater detail than is possible within the scope of this report, and should be reviewed for further information.

Briefly, outside the parameters of the straight news and music programs, VOA listeners should be wary of the information which is presented by way of feature programs on the Voice of America. There appears to be a tendency to put an ideological slant to some stories predicated upon certain initiatives or views of a sitting Administration. In addition, there is also a tendency to portray or give greater weight to the positive side of life in the United States, clouding the views of those who listen to VOA broadcasts and who, for political, religious or other reasons, wish to emigrate to this country. A certain amount of the mail VOA receives is replete with requests for food, money and material/consumer goods from less fortunate parts of the world. Some of these requests, no doubt, are fueled by a mistaken view that the United States is a land of limitless wealth. The extent to which VOA programming may contribute to this view should be reviewed.

While our focus has been primarily on the English language broadcasts, certain problems of a similar nature are also present in the foreign language broadcasts.

Informal discussions with language service personnel generally reveal a concern that VOA programming lacks balance. Those language services that can try to avoid program material generated by the English Division which would not be well received by their specific audiences.

The manner in which VOA covers specific news events may, at times, be found wanting.

For example, while VOA coverage of the Republican National Convention was, to some individuals, almost gavel-to-gavel, coverage of the Democratic National Convention was apparently more selective. Most notable was the fact that a keynote address by members of the family of the late President John F. Kennedy was picked up in progress, coincidentally at a point in which some highlights of the Reagan Administration were being pointed out. Earlier parts of the speech more critical of the Reagan Administration were missed.

In another instance, the Russian language service noted the anniversary of the assassination of President John F. Kennedy almost a full week after the fact.

Still again, VOA was assigned so-called "pool" coverage of a portion of the visit of Soviet General Secretary Gorbachev to the United Nations in December, 1988. The assignment was somehow overlooked, causing an interruption of coverage of the event. While incidents such as this occur from time to time, the reaction of Agency officials, when notified of the problems this caused, was to cover up the matter by instructing employees not to notify higher-level management of the problem, but to pursue the matter via first-line supervisors, thus burying the problem at the lowest level of the VOA bureaucracy.

Before moving on to other topics, we would like to touch briefly upon two satellite operations of the Voice of America: VOA/Europe and Radio Marti.

While we respect the support these program initiatives enjoy in the Congress, we find oursleves still in the position of questioning their relative merit in an era of fiscal retrenchment in which continued support for these services deprive other Agency broadcast elements of necessary fiscal resources.

We continue to be skeptical of the overall value of the VOA/Europe operation. We fail to understand how a program element which is based heavily upon a format of contemporary music serves the interests of public diplomacy. We take this view particularly with regard to the fact that the program content of VOA/Europe is readily available in Western Europe. In addition, the programming is in English and not in the vernacular languages of the principal target areas. Thus, VOA/Europe competes against not only the BBC and its broadcasts of this nature, but also the broadcasts of those European radio outlets playing the same music.

We believe the case for a continuation of VOA/Europe operations would be better made if VOA/Europe was offering something which was not readily available in Western Europe. This, however, does not appear to be the case.

A belief, often expressed within VOA, is that VOA/Europe is more suited to Americans overseas in Europe, particularly as it has been available on cable systems in major European cities which would cater to the American tourist trade. Its "Eurofacts" feature program often catalogs appearances by contemporary music groups...information which it would seem would be readily available to Western Europeans but not necessarily to Americans travelling abroad.

The Radio Marti program also enjoys support in the Congress. While there may be merit to the Radio Marti effort, we believe that it may be possible to blend aspects of this effort into the regular Spanish language broadcasts to Latin America, thereby enhancing the overall effort to the entire region, perhaps in the form of expanded broadcast hours. Cuban officials have been reported to be angered with the Radio Marti effort. Whether or not such reactions to the Radio Marti broadcasts are in the long or short term best interests of the United States should be evaluated, although it appears unlikely that the Cuban government's attitudes toward the United States are likely to change with or without Radio Marti.

We sadly note the end of direct broadcasts to Thailand in 1988. We believe the broadcast mission to Southeast Asia is an important one. The Thai broadcastr were a symbolic link to one country in the region which maintains friendly relations with the United States. The direct broadcasts have been replaced by a daily feed to the country which, in our view, is a poor substitute for the regular direct broadcasts.

The experience of the Thai service is likely to be repeated in 1989, as it is projected that the Greek and Turkish direct broadcasts may be terminated at the end of the current Fiscal Year. Additional program cuts to other language services also appear possible.

While the Agency publicly places the cause of these actions as the result of budget reductions, we believe that an equally serious factor may be a decline in the popularity of VOA programs. While, as we noted, the entertainment programs still generate considerable interest in many parts of the Third World, the lack of balance in VOA "public affairs" programming is undermining the overall program effort.

The extent to which VOA programming can be compromised was clearly articulated in the Carolyn Weaver article for the Columbia Journalism Review issue of November/December 1988. From editorials broadcast to Iran, countless features on the struggles against international communism to broadcasts of music as covert messages, the litany of VOA Charter abuses runs the gamut.

We are by no means foreign policy, defense or intelligence community experts. However, we do believe we can offer some conventional wisdom on the consequences of using the Voice of America for purposes other than those spelled out clearly in its Charter:

The extent to which VOA may have been used for covert activity or for purely overt efforts to push forward a particular "world view" must be weighed against discovery of such undertones by the average individual listening to a VOA broadcast. In the words of contemporary author and businessman Herb Cohen, "a tactic perceived is no tactic." Thus, if what VOA broadcasts can be affirmatively rebutted or portrayed as an artful tool of the American intelligence community, the value of such an effort is significantly reduced in value, while at the same time the credibility of VOA is damaged immeasurably, along with its usefulness as a medium for American public diplomacy. In our opinion, this may account for diminished interest in some aspects of VOA programming, which in turn result in service cutbacks.

The noted military strategist Carl von Clausewitz noted that war was "politics by other means." In today's world where direct military confrontations between the superpowers are potentially catastrophic, and where wars are often waged indirectly through surrogates, waging war "by other means" becomes an attractive option. For the sake of discussion, if VOA was used as an artful tool in pursuing certain goals outside the scope of the VOA Charter, it would appear that the relative merit of such continued activity, upon discovery, is diminished.

V. Conclusions and Recommendations

Mr. Chairman:

For the past three years, we have been tracking issues relating to the Voice of America focusing to large extent upon the modernization of the VOA technical facilities, but also expanding our overview to include program and personnel issues as well.

Reviewing the past submissions to the Congress and events over the course of 1988, we are forced to conclude that the Voice of America, across the board, is in serious trouble. The year 1988, in our opinion, was one of wholesale, precipitous deterioration, to the extent that we believe that the mission of the Agency is in peril and that as a consequence, the Voice of America now represents a liability in the forum of public diplomacy.

Reponsibility for this shameful state of affairs lies squarely with VOA management: the networking process developed by certain VOA managers, and the ability to take advantage of the high turnover rate in the VOA Director's post to move personal agendas for personal gain while creating a false image of progress and "business as usual," not only for successive VOA directors, but also for the Congress, the press, the public and its own employees. This process has been so ingrained in the VOA management psyche that it continues today, even in the face of public disclosures and investigations into VOA management activities.

Thus, VOA modernization became an entity unto itself, rather than a finite project with a beginning and definite ending. As it stands now, there is no end to the modernization process, other than as it may be imposed by a lack of funding and/or the lack of technology to support some of the "blue sky, best-case scenarios" and pet projects adopted by VOA management, most of which are presently mired in delays and technical difficulties.

Thus, VOA adopted personnel practices which culminated in a sex discrimination class action suit involving over 4-thousand female applicants for a wide variety of positions within the Agency.

Thus, VOA adopted personnel practices which resulted in an eight-month investigation by the General Accounting Office.

Thus, VOA adopted personnel practices which have embraced anti-employee animus resulting in protracted cycles of litigation and mutual animosity between Agency officials and employees.

Thus, key VOA managers, afforded broad powers, reorganized Agency elements, wholesale, forcing other officials out in order to make way for individuals of like temperament to perpetuate their system and philosophy indefinitely.

Thus, decisions are made supporting programming efforts of questionable merit (such as, in our view, VOA/Europe and VOA/Pacific) while the lifeblood of VOA broadcast operations, its foreign language broadcasts, are terminated, one after another, due to declining audiences.

Thus, since VOA managers use the consensus approach to decisionmaking, virtually every activity is endorsed and supported by the entire management element.

Thus, due to management's diminished level of competence, one failure and/or faulty decision follows another...from the modernization project to setting up work schedules for staff personnel.

We have developed a belief and concern that VOA programs are becoming less appealing to our foreign audiences. As a consequence, diminished audiences have caused the elimination of direct broadcasts in Portuguese to Europe and Thai to Thailand. Certain language broadcasts (in Hausa and Swahili) do not broadcast on weekends. It is projected that Greek and Turkish broadcasts will be terminated at the end of the current fiscal year.

Our daily contact with language service personnel point to one complaint after another with regard to the editorial content and journalistic quality of the daily VOA broadcasts. In essence, VOA broadcasters complain of a lack of accuracy and balance in VOA programs. A recent article in the Washington Post noted the complaints of emigres from the Soviet Union depicting VOA broadcasts as insufficiently accurate with regard to social, economic and political conditions in the West.

Contrary to a recent statement by VOA Director Richard Carlson, the Voice of America is not the "premiere international radio broadcaster." This distinction is reserved for the BBC whose record of service and unquestioned accuracy and credibility make it the preeminent authority and leader in the field of international broadcasting.

An overdose of political ideology, coupled with the manipulation of VOA broadcasts for apparent covert activities, as highlighted in recent press accounts, are doing serious damage to the credibility of the United States and its international radio broadcasting effort.

To expand upon an earlier statement, diminishing VOA audiences, in our view, are indicative of the stronger competition confronting not only VOA, but other international radio broadcasters as well. Deregulation of radio in Europe and the growth of radio and television worldwide, on a local and regional basis, have made it imperative for international radio broadcasters to development creative, thought-provoking and informative programming. Certainly, VOA has devoted listeners and popular programs. However, it is the overall effort which needs close examination. Programs here and there which have devotees do not justify the expense of a costly operational effort.

As we approach the decade of the 1990s, we have every reason to believe that current trends will continue. There is no question that there will be a need for the Voice of America. The operative uncertainty is precisely how much of VOA do we need; and if we wish to keep what we have, how can the Voice of America improve its program effectiveness.

In an effort to provide the Congress with some guidance and direction, we respectfully submit the following recommendations:

First, we believe that VOA should be reorganized internally and externally. Internally, we do not believe that the present management possesses the skill, credibility and leadership qualities needed to lead this agency through one of the more traumatic periods of its history (in our view, largely due to decisions of the present management "network"). Like NASA following the Shuttle CHALLENGER disaster, VOA is demoralized and in need of a thorough "housecleaning." Whether through a GAO investigation or appropriately commissioned panel, some mechanism must be emplaced and entrusted with the task of correcting VOA's internal malaise.

Externally, the Voice of America must be independently organized. In the past, we have suggested that VOA should be placed under the wing of the Board for International Broadcasting. Presently, we believe it may be necessary to incorporate VOA as a totally separate entity, perhaps with temporary guidance from the Corporation for Public Broadcasting.

Second, we believe that some immediate and long-range planning should be focused upon a method of generating tax-deductible, direct funding from the American public. In conjunction with that effort, repeal of certain existing statutes should be considered to allow VOA program dissemination within the United States. Such an effort would contribute to greater accountability and public oversight.

Third, as in past years, we recommend that the brakes be applied to the modernization program and that the entire effort be reviewed. The modernization effort has been a major disaster. It is a testament to incompetence and reckless irresponsibility with public funds. Accountability, in our view, is the watchword of the day. Without it, the modernization effort will continue to muddle along, spending millions of tax dollars and become even further removed from successful completion and deployment.

Technical renovations at the Washington Headquarters facility continue, even while it is anticipated that VOA will be relocated to new office space in the Federal Triangle area of Washington. Thus, it would seem that the entire modernization effort will be duplicated, once again, in a few short years requiring expenditures of more taxpayer revenues to build yet another Master Control, studios, and related facilities which are now being built at the existing Washington Headquarters facility. Due to the fact that VOA broadcast facilities are centrally located, most if not all of what exists today must be duplicated at the new location in order to provide a smooth operational transition and program continuity.

Generally, we are supportive of relocating VOA to new office space due to what we consider the deteriorating conditions of the existing physical plant. Employees continue to suffer from a variety of upper respiratory problems which appear to be linked to the Washington Headquarters Building, but defy identification. In addition, the presence of asbestos acoustical tiles and PCB-laced wiring lubricants continue to be encountered.

Fourth, editorially, VOA must move toward the highest standards of objective and responsible journalism, in compliance with the spirit and letter of the VOA Charter. Use of VOA as a medium for transmission of covert messages, if existent in the past, should be discontinued in the present and future.

Fifth, we believe that a model for fiscal retrenchment needs to be established by individuals outside the Agency. Some years ago, National Public Radio, threatened by its own fiscal crisis, sucessfully reversed its financial difficulties and today continues to be a hallmark of public broadcasting in the United States. The NPR experience, if not the individuals involved in the effort, should be called upon to salvage VOA's fiscal environment.

Finally, we would urge the Congress to conduct hearings pursuant to the issues we have presented.

VI. Summary and Closing

Mr. Chairman:

With deep regret, we look back over the past year at the Voice of America and see a continuation of the decline of an institution which has seen the passing of its better years, at least for the immediate and forseeable future.

Presently, VOA exists and functions; yet, it is not a formidable competitor in the international radio broadcasting community. Under present conditions, it is not likely that VOA will seriously challenge the preeminence of the BBC in the medium. The Voice of America of today does not possess a driving spirit of creativity. Rather, the focus rests upon mere survival in an age of major fiscal retrenchment.

In the anticipation of more hardships ahead for the Voice of America, we have one basic request of the Congress and the new Administration of President Bush: superior, professional leadership.

Much of the difficulty the Voice of America finds itself in today is the consequence of a diminished level of competence in many positions of responsibility within the Agency. The tone and character of the existent management philosophy is professionally bankrupt; its only achievement being the fracturing of the cohesiveness which a complex technical, journalistic and artistic environment of this type requires for success. Even without abundant fiscal and material resources, a unified workforce can still achieve, but only if a bond exists among all the diverse employee elements and between employees and managers.

The international broadcasting community is becoming more competitive as regional broadcasters proliferate and as television grows in availability throughout the Third World. Indeed, one of VOA's principal competitors may, in fact, be Cable News Network which is now available in over 63 countries around the world. While it may not be widely available as yet, CNN can be expected to have continued growth in coming years in its overseas markets. CNN is popular with American and foreign dipolmats and is even watched by officials of the Cuban government, who often take exception to VOA's Radio Marti programs.

As we look toward the 1990s, we anticipate that VOA will be doing less and not more. However, whatever it does should be guided by the highest standards and values.

As these words are being written, read and critiqued, there are men, women and children...people of broad and diverse cultures and living conditions listening to VOA broadcasts. They are listening to VOA because, in some way, they are searching for something in a spoken word which can make a difference in their lives, perhaps ease the burden of difficult circumstances or propel one's desires and dreams from inspiration into action.

There is no greater gift that we can give the world than truth...truth which stands on its own merit...truth not manipulated or twisted for self-serving gain...truth sometimes painful but nevertheless true. From truth grows wisdom and knowledge, breaking down suspicions and providing the basis for an expanded community of interests among all people .

Changes both large and small are a regular part of our existence.

Today, in form and perhaps in substance, the Soviet Union finds itself at a crossroads. How successfully it negotiates political and economic change will have a significant bearing upon the future of mankind, extending far beyond its own national boundaries.

Today, we find ourselves confronting such man-made crises as economic deprivation, pollution, terrorism and drug abuse.

As in times past, the present calls upon all of us to confront adversity or change in whatever form it manifests itself and act responsibly.

So long as we exist in a dynamic international environment there will always be a need for the Voice of America...but it is a need predicated upon a Voice of America which is firmly committed to responsible journalism and thus is respected for its integrity and credibility. To do less would make the entire effort a wasted effort.

The Voice of America in 1989 will be faced with numerous difficulties. We have reported on these difficulties, as we see them, to the best of our ability, in the hope that Members of Congress will take appropriate action to restore the tone and character, standards and values of the Voice of America.

Respectfully submitted in the National and Public Interest:

Gary A. Marco

Gary A. Marco
President, NFFE Local 1418

QUESTIONS SUBMITTED BY SENATOR WARREN RUDMAN

VOA Reductions

QUESTION:

The Agency is proposing to close radio relay stations in Costa Rica and Antigua which serve portions of Central America and the Caribbean. In addition, VOA will cease broadcasts in Greek and Turkish and provide those services as "feeds" to local radio stations. As I understand it, these changes will save approximately $2 million. By taking these actions, we will be diminishing our presence in several key areas of the world. What impact will these reductions have on the ability of VOA to reach audiences in these areas? Did the Agency assess the political and strategic implications of these reductions before proposing them?

ANSWER:

Costa Rica and Antigua are considered lower priority relay stations because they reach relatively small populations and the coverage can be duplicated from other transmitters. Closing the two stations will save VOA more than $1.3 million in operating costs in FY 1990.

Antigua's 50 kW medium wave transmitter carries four hours of English daily. Most of this programming is also carried on a leased 135 kW medium wave transmitter broadcasting a superior signal into the region from Montserrat, West Indies. The Quesada, Costa Rica 50 kW medium wave transmitter carries 7 1/2 hours of Spanish daily into the sparsely populated northern regions of Costa Rica and southern Nicaragua but does not reach Managua. However, the VOA station in Belize does provide coverage of Managua and other parts of Nicaragua. Radio Costa Rica will also continue to broadcast VOA programs on medium wave in the vicinity of San Jose, and we are working on other placement opportunities in the region. In addition, shortwave transmission from the VOA Delano and Greenville Relay Stations will still be available.

Converting the Greek and Turkish Services to field placement services will save approximately $600,000 in FY 1990. The Greek and Turkish Services have very small audiences for direct broadcasts. According to the latest research, less than 1% of the Greek population listens to VOA Greek on shortwave. Turkish listenership is less than 2% of the potential audience. VOA has had great success in supplying programs to local Greek stations and will continue this effort. We are now vigorously pursuing placement opportunities in Turkey.

We believe that ceasing direct broadcasts in Greek and Turkish and closing the Antigua and Costa Rica relay stations will cause the least damage to our worldwide mission.

USIA Post Closings

QUESTION:

The 1990 budget for USIA assumes that posts will be closed in Christchurch, New Zealand, Chiang Mai, the Vatican, and at the Office of Economic Cooperation and Development in Paris. Total savings would be approximately $1 million. The 1990 authorization bill for USIA, as reported by the House Foreign Affairs Committee, would require USIA to give a notification of one year to the Congress before any overseas post could be closed. What impact would such a requirement have on USIA operations and on the USIA budget? If we are unable to give the Agency its full budget request for 1990, wouldn't this notification requirement cause further problems?

ANSWER:

Section 202 of USIA's authorizing legislation for 1988-1989 (P.L. 100-204) prohibited the Agency from closing any posts abroad. The Agency opposed this provision vigorously -- not allowing post closings in a time of government-wide budget constraints can only result in a strained and distorted overall public diplomacy program. The Administration, in a March 31, 1987 statement, opposed enactment of the bill (H.R. 1777) in part because of this provision, stating that it, and similar provisions, "...would unduly limit Presidential discretion and flexibility." Finally, the provision was waived by appropriation language.

The provision in the current version of the House bill (H.R. 1487) would not prohibit closings, but would require one year's notification to the Congress. It would also require one year's notification for "...downgrading, through reductions in staff or operations, of a United States Information Agency post abroad."

We find this extremely limiting. The Agency's most valuable asset is the officer on the ground in foreign countries, and we do not like to close posts or reduce programs or personnel. However, we also believe that we must be allowed managerial flexibility to determine the best use of available funding.

The international situation can change rapidly, and we must be ready to respond with a tailored public diplomacy program. Prudent resource management sometimes dictates that we direct resources from one part of the Agency to another, especially as budgets get tighter.

This new advance notice requirement -- although it is not clear what "downgrading" might mean -- would severely limit the needed flexibility. For example, the Agency's 1990 budget, which contains proposals to close three posts, was forwarded to the Congress in January, 1989. The requirement would not allow us to begin closing these posts on October 1, to maximize 1990 savings, but would force us to wait until until January 1990 -- four months into the fiscal year. We could not propose closings much before that, since final decisions on resource levels are not reached until the conclusion of negotiations with OMB, typically in December.

In its Statement of Administration Policy on H.R. 1487, the Administration stated that the provisions (and a similar one for the State Department) were unworkable and intrude upon the President's authority.

We will, of course, continue to follow the appropriate reprogramming notification procedures. But we believe that the provision, as currently drafted, would result in a public diplomacy program that is unnecessarily rigid and unresponsive. The provision would become progressively more onerous to the degree that Congress is unable to appropriate the full amount of the Agency's request.

East Asia and Pacific Program

QUESTION:

For overseas mission operations, the agency is budgeting $31.2 million in 1990 for East Asia and the Pacific. Almost half of this amount--$15.1 million--will be spent in Japan. The country with the next largest budget in Asia is Korea at $3.2 million. Indeed, the country budget for Japan is the largest in the world, with West Germany second at $9.9 million.

Japan is the most developed country in Asia and there are a number of ways in which American culture and values can be transmitted independent of USIA. A number of economically less developed but growing countries in the region have substantially smaller programs. Shouldn't we be concentrating our efforts in these countries, where we can lay the groundwork for future progress in the understanding of American life and culture?

ANSWER:

Running a public affairs program in an expensive, sophisticated and media saturated market like Japan is more costly than a similar program is in a developing country. It costs more, but that's where the payoff is. We agree that USIS programs in less developed but growing countries are very important. However, we also firmly believe that we can not afford to ignore Japan. No single country in the world means more to the U.S. in economic and security terms:

-- It is the world's second largest economy: one prefecture alone represents one percent of the world GNP. (Together our two countries control 40% of the world GNP.)

-- It is our second major trading partner and our largest overseas market--buying more of our agricultural products than any other country.

-- It is an ally, which provides bases for U. S. Army, Navy, Air Force and Marine units, totaling 60,000 Americans. (These same Japanese bases sit strategically close to maritime straits that provide the only outlet to the Soviet Far Eastern fleet.)

Doing business in Japan is undeniably costly, and has become more so since the rapid appreciation of the yen, but an understanding of U.S. policies and society in Japan is critical. Promoting that understanding in this democratic, all but 100% literate, and intellectually curious country requires a major, complex--and, unfortunately, costly--effort.

We believe it would be a serious miscalculation to assume that the independent flow of information between the two countries promotes an understanding of U.S. culture and values, or even Administration policies. The Japanese continue to cling to misperceptions about the United States--some of which are perpetuated in sensational film, TV and press products. Japan's misunderstanding of the U.S. is manifest daily; common questions concern the presumed weakness of America because of the inherent deficiency of minorities and the American economy's future strength and productivity.

These misperceptions cannot be overcome by random information exchange via the commercial media or other private-sector groups. USIS Japan conducts sustained communication with a highly targeted audience on specific issues that not only deal with the U.S.-Japan relationship, but affect the current and future stability of the Pacific region. We do this systematically through:

- -- reference libraries in Tokyo, Osaka and other branch posts that are unmatched in Japan for access to information about the U.S.;
- -- speakers ranging from cabinet members to major academic figures;
- -- publications in Japanese tailored to policy objectives and the known interests of the recipients;
- -- press conferences, press releases and other facilitative efforts with Japanese journalists;
- -- cultural programming, often with co-sponsorship and shared costs;
- -- educational exchange programs and counseling;
- -- personal contact with the media, business, cultural and political opinion leaders developed by our language-proficient USIS officers and their professional Japanese colleagues.

These programs are essential to our relationship with Japan, and if USIA does not do them, no one else will -- not the academic expert, not the foreign correspondent, not the businessman.

Because of budget cuts during the last three years, we have been forced to reduce Tokyo's allocation by over one and one-half million dollars and eliminate one American and six foreign national positions. These cuts have hurt our ability to conduct such programs. But despite these severe reductions, we firmly believe that a strong USIS program in Japan is important.

That the future balance of economic power points to Asia--and Japan as the undisputed leader--cannot be dismissed. We simply cannot take Japan's future role as military ally and economic partner for granted.

If there has been a single failure in American corporate policy toward Japan, it has been short-term impatience and the unwillingness of corporations to make the sustained costly commitment that is required to do business there. Those making this commitment have succeeded; those not making it have failed. It would be ironic if our public diplomacy effort in Japan should be curtailed because of our inability to learn this lesson.

USIA-WORLDNET

QUESTION:

The 1988-1989 authorization act for the USIA included language prohibiting the Agency from broadcasting a substantial portion of its WORLDNET programming after October 1, 1988, if it could not prove that the average daily European audience for this programming was at least 2 million viewers. As a result, programs prepared or acquired by the Agency are not currently being broadcast, and only programming acquired without cost is being made available. Mr. Stone, if you had been a participating journalist in the second Presidential debate in 1988 -- as your were in 1980 -- I'm sure you would have been disappointed that the debate was not broadcast on WORLDNET due to this restriction.

What other impact has this restriction had on WORLDNET broadcasting? Have you been given any indication by the authorizing committees that they intend to modify or repeal this restriction?

ANSWER:

The impact has been twofold. First, the prohibition has deprived us of the ability to transmit timely information news and information about breaking events to foreign audiences around the world. In an era when an ever-increasing number of people rely on television as their primary source of information about the rest of the world, the prohibition cut off our most effective means of exploiting this medium.

Secondly, WORLDNET had become, in a remarkably short time, a valued and respected source of information and program material in the foreign journalistic community. Television journalists around the world came to rely on USIS for high-quality, placeable stories on the important issues of the day. The sudden cut-off of the service was therefore a serious embarrassment to our posts and effectively undercut the strong relationships that many of our PAOs had been able to build through the daily provision of WORLDNET materials.

Our post in Tel Aviv recently sent us a cable that dramatically illustrates the impact of the prohibition: "One regional TV station once relied heavily on WORLDNET's 'America Today' coverage for news footage. It can't at present. So its viewers ... were treated last week to same-day footage from a Soviet satellite and a service labelled "3SAT" of Gorbachev's visits to Havana and London -- but nothing similar on the Mubarak and Shamir visits to Washington."

WORLDNET Satellite Contract

QUESTION:

In anticipation of increasing Latin American WORLDNET service from one hour to 24 hours a day, USIA recently awarded a sole source contract for the transmission and distribution of this service to Embratel, the telecommunications company owned by the government of Brazil. Embratel will then subcontract with Intelsat, the international satellite communications consortium, for transponders on its satellites.

I'm concerned about this for several reasons. First, the government of Brazil has been extremely reluctant to open its borders to American goods and services. However, it has had no qualms about dumping low-priced goods in the United States, and one of the results has been the virtual destruction of the shoe industry in New England.

Second, a privately-owned, American company now has a satellite that provides telecommunications service to Latin America and Europe. Both the American government and this subcommittee, under the leadership of Senator Hollings, have actively supported efforts by this company (PanAmSat) and others to break the monopoly held on international telecommunications services by Intelsat.

Third, this procurement was done on a sole source basis. In the face of stringent budget constraints, this may not have been wise.

Given the policy of the United States government to encourage American and private sector alternatives to Intelsat, and the possible savings a competitive contract could have provided, why did the Agency make the decision to award a contract to Embratel?

ANSWER:

It is necessary to set the record straight concerning our contract with Empressa Brasilia de Telecommunicales SA (Embratel). We did not recently award a contract to Embratel. We did recently modify an existing contract with Embratel to provide 24 hour per day service. Both the initial award and the modification were made in full compliance with the requirements of the Federal Acquisition Regulations. We are aware that PanAmSat is unhappy with this situation and refuses to accept the fact that an existing contract cannot be abandoned. In addition, we applied sound business judgement to the decisions. We are providing the following history to support our actions.

In 1984, USIA began an international television service called Worldnet. Service first began to Europe and was expanded to Latin America in 1986. The concept of the network was to have international satellite video distribution from our studios in Washington to many different locations at our USIS Posts overseas. This concept called "point-to-multipoint" transmission had only been done occasionally and there was only one international satellite system, Intelsat.

Intelsat had been established by executive agreement between nations as an international cooperative owned by a consortium of nations. The national members of Intelsat are known as Signatories. The U.S. Signatory, which owns 26 percent of Intelsat, is COMSAT. In a "point-to-point" transmission the full Intelsat cost is covered by a payment structure where one half of the circuit cost is paid by the Signatory in the sending country and one half is paid by the Signatory in the receiving country. However, in a "point-to- multipoint" transmission the Intelsat rules permit the Signatory in each receiving country to charge down-link fees. In USIA's Worldnet distribution the sum of the parts would have been much greater than the whole and clearly cost prohibitive. Worldnet would cost 20 times as much as it does presently if each receiving Signatory charged a one half down-link fee. At our request, the Intelsat Board of Governors approved a fee structure for our noncommercial transmissions that would permit us to pay COMSAT the one half up-link fee and a single Signatory in the reception area the one half down-link fee. While this fee arrangement was made available to USIA and other countries, we believe no other customer uses this type of lease.

There are 21 Signatories in Latin America. The single down-link fee arrangement was new to them. Although the Intelsat Board would permit the waiver of multiple fees at the discretion of each Signatory, we understand it was not a unanimous decision and a number of Latin American Signatories had to be persuaded to go along. Intelsat recommended that we choose the largest, most technically knowledgeable Signatory in the region, Embratel, to be our network manager to set up this new extensive point-to-multipoint network. Thus, when USIA was ready to start Latin American service in 1986, there were no alternatives to the Intelsat system and we followed Intelsat's advice to contract with Embratel to be our Network Manager to establish the physical arrangements required and to coordinate our efforts with the other Signatories in the region. The Embratel contract was awarded noncompetitively. Its effective date was July 1, 1986, and it was for a five year term which will end June 30, 1991.

Satellite Transmission costs are only a part of the total investment required to establish the network. All of our video and subcarrier transmissions are one way, there is no return signal. (For interactive broadcasts a return audio telephone circuit is established.) The type of earth station required to up-link to a satellite is usually very large, expensive and requires sophisticated technical control to avoid channel interference among the various circuits on a single satellite. However, when the down-link is received only, technology allows the installation of a smaller, less expensive television receive-only (TVRO) dish to be used. The technical standard established by the Agency is higher than most backyard TVROs because the material is often recorded for rebroadcast over local TV stations and the received signal must be near broadcast quality. The establishment of the Worldnet network has included the installation of over 168 TVRO dishes.

A TVRO must be able to "see" the satellite. It cannot be behind a building, mountain range or even below the horizon. Local measurements must be made to determine if there are any sources of electronic interference that would affect the reception of a broadcast quality video signal. Each satellite is manufactured to maximize its signal strength over a certain reception area. The signal strength measurement is calculated as the Effective Isotropic Radiated Power (EIRP). The actual EIRP can be measured at each specific reception location and the size of the TVRO required to obtain a technically acceptable transmission can then be determined.

USIA made a site survey of each location where we planned to install a TVRO. We could only do this because we knew exactly which transponder on which satellite would be used. We spent $50,328 on these site surveys. At this time we have purchased and installed 35 TVROs in Latin America. Plans are underway for nine more sites. The cost of the network to date is $1,030,385. The attached table provides details of cost per site.

Some of the sites required roof mounts because of interference or blocked sight lines. Sometimes this created a need to structurally reinforce the building. Satellite dishes are not beautiful, the selection of the smallest size capable of receiving an acceptable signal, at the measured EIRP level, and its placement on the USIS premises were decisions made to meet local zoning laws to lessen the visual impact at each site. Because the cost of the Latin American network was expected to grow, and in fact is now an investment of more than $1 million, the Embratel contract was written for a term of five years to maximize our return on the investment and to minimize cost duplication that might be associated with annual conversion to successor contractors. Longer term contracts also entitle the buyer to the lower costs of lower multi-year tariff rates. Public Law 80-402, Title VIII, Section 802(b) gives the Agency authority to enter into contracts for periods not in excess of five years.

The initial Embratel contract described the technical performance requirements. Embratel competitively chose American subcontractors to provide domestic circuits from the USIA studios to a up-link earth station. COMSAT, the U.S. signatory, provides the up-link space segment. Embratel is responsible for the down-link space segment, constant monitoring and trouble shooting. More than half the total contract payment to EMBRATEL has come back to U.S. subcontractors. (COMSAT is reported to own 26% of Intelsat, so COMSAT receives 26% of the dividends paid by Intelsat which, of course, includes the revenue on Embratel's down-link portion of the contract.)

The initial contract specifically provided for the possibility of an expansion in the hours of service. In Section B.2.e.(1) the Network Manager is to develop procedures to be able to, "extend services and operation at the request of USIA." Article G.13, "Changes-Fixed Price" specifically states that the Contracting Officer may at any time...make changes within the general scope of this contract in any one or more of the following:...(2) Time of performance (ie, hours of the day, days of the week, etc.)" The expansion of service from one hour per day to 24 hours per day did not involve any technical performance changes. (The concept of the expansion of service is not that the contract is 24 times as much. The Intelsat tariff for full time use is about three times the hourly rate.)

The action to modify the existing contract is clearly within the term and scope of the contract. Indeed a responsible contractor providing fully acceptable contract performance has every expectation that the annual options for renewal will be exercised for the full five years contract term. And as a responsible buyer USIA would not abrogate an existing contract without sufficient reason.

The situation has changed since the Embratel contract. Alpha Lyracom has launched Pan American Satellite 1. Therefore, we followed the provisions of FAR 17.207 on the exercise of options. We announced our intention to change the hours of service. The FAR permits us to exercise an option only when it is the most advantageous method of fulfilling the Government's need, price and other factors considered. The factors must include technical capability, need for continuity of services and potential costs of disruption. (FAR 17.207(e))

Alpha Lyracom presented their capability statement which was thoroughly reviewed, including extensive answers to their questions which were provided by USIA. PanAmSat has not taken actual EIRP field measurements in many of cities where our Posts are located. They do have signal strength computer projections which indicate that four Posts in Brazil and four Posts in Mexico and the Caribbean will be outside the lower limits for which our installations were designed. Each Post would have to be resurveyed. Even where a Post lies within the projected pattern expected to receive a strong signal, a survey would be required to verify the reception of a broadcast quality signal, the absence of interference (very important, because PanAmSat failed to confirm the use of the down-link frequency of 3995 MHZ presently being used, which was the frequency surveyed for interference) and ability to "see" the alternative satellite. There would be at least two alternative satellites. PanAmSat states that the Mexican Posts outside their transmission pattern would receive service from a U.S. domestic satellite.

The USIA TVROs in Latin America have motor drives which permit them to be repositioned on different satellites. Most have experimented with looking at the PAS-1 to pick up CNN or ESPN on this satellite.

They confirm the need for a formal survey, because some of the reception is visibly not of a broadcast quality. This may indicate that the TVRO would have to be relocated to avoid electronic or physical interference. PanAmSat said, "Any civil works, or creation of new earth station facilities, will not be the responsibility of ALSC (Alpha Lyracom Space Communications)." This is also true for three sites in Brazil where ALSC would expand or upgrade the TVRO dish and electronics, but leaves any structural modifications necessary for a larger installation to be at the Agency's expense. ALSC simply did not address Recife, Brazil because it is too far outside the PAS-1 transmission pattern to be reached. (Recife is also outside the Intelsat pattern and Embratel must re-up-link the programs for Recife to a Brazilian domestic transponder to be down-linked at the Post.) While Embratel offers a solution, PanAmSat does not. Finally there is the legal ability to utilize the TVROs in in each country. PanAmSat must coordinate service with Intelsat for each country. They have not done so. When we began Embratel had not received a waiver of multipoint down-link fees from the regional Signatories either. As we built this unique network they, with our help, obtained this permission. This took over two years to achieve. PanAmSat is now building a similar network for CNN and ESPN and will probably have such permission from Intelsat soon. Consultations were just completed March 15, 1989, for Brazil, Guatemala and Honduras. But there is a big difference between starting a network and turning on its components over time as the legal and physical arrangements are put in place and replacing a full operational network without a disruption in service. USIA had two full time employees at a cost $125,000 per year who oversaw the creation of the Latin American network.

Alpha Lyracom gave an informal quotation of $1,920,000 per year for preemptible service. The Embratel contract will be $1,320,883 per year for the same service plus a direct payment of $774,000 to COMSAT for the up-link portion of the circuit for a total cost of $2,094,833. The difference of 8% would be offset by the costs of terminating the existing contract and incurring conversion costs necessary to exchange contractors. We estimate that we would have to reassign the two engineers to the conversion effort for a six month period ($65,000); new site surveys ($50,000); travel and labor to modify all existing sites ($35,000); replacement of down-link monitoring TVRO, which is now provided by Embratel ($30,000); decommission and shipment of 3 TVROs replaced in Brazil ($15,000); travel and perdiem for a negotiation team to terminate the existing contract for the

Government's convenience ($20,000); staff costs for one week for a contracting officer, legal advisor, auditor and technical advisor negotiation team ($5,000); potential tariff early lease termination costs ($140,000) and three month parallel operation ($500,000). The total estimated potential savings over two years would be $350,000. The estimated potential cost of achieving these savings is $860,000.

The Agency was required to make a decision by April 1, 1989. We had been informed in 1988 that Intelsat was receiving inquiries about using the remaining 23 hours per day on the transponder we were using for one hour. If we did not convert to a 24 hour lease this transponder would not be available a the end of the present term. This would lead to the direct conclusion that a successor contract would have to be a noncompetitive award to PanAmSat. We placed a deposit for a right of first refusal to acquire a lease for 24 hours per day. We were required to exercise the option by April 1. Because PanAmSat is unable at this time to legally furnish services to all our Posts in the existing network, it would be necessary to operate both space segments at dual cost until the necessary clearances are obtained. Therefore, it was reasonably determined that it was in the Government's best interest to change the existing contract to 24 hours per day and exercise the options for the balance of the five year term. An Intelsat lease rate for two years was obtained to minimize the cost to the end of the contract term.

Well before the present contract expires a successor will be selected through full and open competition. The Agency will assume our initial site survey fully recovered. A successor will be chosen in sufficient time so any physical adjustments can be made and a clean cut over can be achieved without a need for long term space segment overlap. By that time the use of PAS-1 should be fully coordinated throughout Latin America and the actual field strength EIRP available for technical evaluation.

We believe this long narrative should disprove the assumption that a noncompetitive contract was awarded or that the decision to continue within the terms and conditions of the existing contract was done casually or with prejudice. We also believe that when all the costs associated with Worldnet service to Latin America are considered, that there is no sound business basis for changing contractors.

AR TVRO COSTS AS OF 04/17/89

	SITE LOCATION	COUNTRY	DAYS OPERATIONAL	DATE OPERATIONAL	CONTRACT NUMBER	SURVEY	A & E DESIGN	BASE PAD	TVRO	SHIP & INSTALL	O AND M MANUAL	MISC COSTS	TOTAL
1	Asuncion	PAR	675.00	12-Jun-87	123.00	$1,111	$900	$3,200	$10,090	$8,995	$50		$24,346
2	Bogota	COL	759.00	20-Mar-87	109.00	$1,111	$1,067	$1,562	$10,090	$7,107	$50		$20,987
3	Brasilia	BRA	1032.00	20-Jun-86	101.00	$1,111	$900	$2,552	$10,090	$7,864	$50		$22,567
4	Bridgetown	BAR	538.00	27-Oct-87	134.00	$1,111	$1,100	$18,709	$10,090	$9,703	$50		$40,763
5	Bueno Aires	ARG	983.00	08-Aug-86	108.00	$1,111	$900	$9,189	$10,090	$7,645	$50		$28,985
6	Caracas	VEN	969.00	22-Aug-86	117.00	$1,111	$1,600	$8,549	$10,090	$6,435	$50		$27,835
7	Georgetown	GUY	560.00	05-Oct-87	129.00	$1,111	$1,100	$19,000	$10,090	$8,565	$50		$39,916
8	Guadalajara	MEX	735.00	13-Apr-87	112.00	$1,250	$1,500	$4,171	$13,490	$5,040	$50		$25,501
9	Guatamala (BNC)	GUA	217.00	12-Sep-88	130.00	--	--	--	$5,000	--	--	--	$5,000
10	Guatamala **	GUA	948.00	12-Sep-86	119.00	$750	$900	$6,540	$7,790	$3,395	$50		$19,425
11	Guayaquil	EQU	161.00	07-Nov-88		$1,111	$1,000	$3,181	$7,590	$5,545	$50	$1,110	$19,587
12	Kingston	JAM	189.00	15-Dec-87	133.00	$1,111	$1,000	$4,690	$10,090	$6,972	$50		$23,913
13	Kingston (PAO)	JAM	40.00	08-Mar-89		--	--	--	$4,000	--	--	--	$4,000
14	La Paz	BOL	503.00	01-Dec-87	122.00	$1,111	$900	$4,330	$10,090	$9,217	$50		$25,698
15	Lima	PER	599.00	27-Aug-87	121.00	$1,111	$900	$6,168	$10,090	$4,140	$50		$22,459
16	Managua	NIC	737.00	11-Apr-87	131.00	$1,111	$1,000	$7,000	$10,090	$6,787	$50		$26,038
17	Maricaibo (BNC)	VEN	381.00	01-Apr-88	126.00	--	--	--	$10,000	--	--	--	$10,000
18	Mexico City	MEX	719.00	29-Apr-87	113.00	$1,250	$1,000	$9,000	$13,490	$4,795	$50		$29,585
19	Monterey	MEX	906.00	24-Oct-86	111.00	$1,250	$1,067	$2,100	$13,490	$5,165	$50		$23,122
20	Montevideo	UR	661.00	26-Jun-87	124.00	$1,111	$900	$7,500	$10,090	$6,950	$50		$26,601
21	Nassau	BAH	507.00	27-Nov-87	132.00	$1,111	$1,100	$10,516	$10,090	$7,334	$50		$30,202
22	Panama City	PAN	433.00	09-Feb-88	116.00	$1,250	$1,500	$8,243	$10,090	$5,335	$50		$26,468
23	Paramaribo	SUR	147.00	21-Nov-88		$1,111	$1,100	$13,960	$10,090	$7,619	$50	$750	$34,680
24	Port Au Prince	HAI	409.00	04-Mar-88	120.00	$1,111	$1,000	$12,048	$10,090	$6,335	$50		$30,634
25	Port of Spain	TAT	524.00	10-Nov-87	128.00	$1,111	$1,000	$5,772	$10,090	$9,263	$50		$27,286
26	Porto Alegre ***	BRA	591.00	01-Sep-87	104.00	$1,111	$1,400	$6,894	$0	$6,653	$50		$16,108
27	Quito	EQU	635.00	22-Jul-87	127.00	$1,111	$900	$2,289	$10,090	$5,907	$50		$20,347
28	Recife	BRA	115.00	23-Dec-88		--	--	--	$24,405	--	--	--	$24,405
29	Rio De Janeiro	BRA	887.00	12-Nov-88	106.00	$1,111	$970	$9,200	$10,090	$8,225	$50		$29,646
30	San Jose	CR	918.00	15-Oct-86	115.00	$1,250	$1,500	$8,072	$10,090	$4,555	$50		$25,517
31	San Salvador	ELS	1074.00	09-May-86	110.00	$1,250	$900	$8,000	$10,090	$5,016	$50		$25,306
32	Santiago	CHI	630.00	27-Jul-87	125.00	$1,111	$900	$7,525	$10,090	$8,225	$50		$27,901
33	Santo Domingo	DR	1087.00	26-Apr-86	100.00	$750	$900	$2,801	$7,790	$5,180	$50		$17,471
34	Sao Paulo	BRA	1001.00	18-Jul-86	105.00	$1,111	$900	$9,915	$10,090	$8,165	$50		$30,231
35	Tegucigalpa	HON	871.00	28-Nov-86	114.00	$1,250	$1,067	$3,166	$7,790	$5,628	$50		$18,951
	Antigua	A&B				$2,167							$2,167
	Belize City	BEL				$2,167							$2,167
	Belo Horizonte	BRA				$1,111	$900	$6,863	$10,363	$15,048			$34,285
	St. Georges	GRA				$3,278							$3,278
	Havana (PAO)	CUB				--	--	--	$1,900	--	--	--	$1,900
	Kingston (REPL)	JAM				$3,119	$800		$10,090	$1,118		$500	$15,627
	Montevideo (BNC)	UR							$9,850				$9,850
	Salvador Bahia	BRA				$1,111	$1,000		$13,490	$8,494			$24,095
	San Jose (MOVE)	CR				$2,680				$6,320			$9,000
	Notch and Bandpass filters											$8,250	$8,250
	Spare indoor equipment											$19,480	$19,480
	Compensation for delays											$45,807	$45,807
						$50,328	$35,570	$232,705	$395,598	$238,737	$1,550	$75,897	$1,030,385

Notes:
*** TVRO at post from Salvador Bahia
** Post purchased its own antenna motor drive

QUESTION SUBMITTED BY SENATOR DANIEL K. INOUYE

East-West Center

QUESTION:

The East-West Center has been working to develop a proposal which would increase the Center's baseline funding by several million dollars in 1991. Would you please provide the subcommittee with details about the proposal, the amount you are seeking, and what we can expect to accomplish with this additional investment in the Center?

ANSWER:

The Center is the nation's only federally-supported civilian institution focusing its entire resources and energy on the Asia/Pacific region and its relationship to the U.S. The region has grown economically with near explosive force during the past 30 years. The Center wishes to substantially expand its role in helping the U.S. better understand and deal with Asia and the Pacific. For FY 1991, the Center is seeking a $6 million enhancement as follows:

-- Economic Development: $1,550,000. Program emphasis will include U.S.-Japan Economic Cooperation, ASEAN, and Asia/Pacific Economic Outlook. Many problems confronting the US/Asia/Pacific region are economic in nature. This new program will provide policy-makers with more sophisticated analyses.

-- International Relations: $850,000. Expanded programs will include Pacific Island Countries and Territories, Asia/Pacific Security, and Issue Task Forces. Research will provide new processes to deal with the increasingly complex relations in the region, including the role of the Soviet Union.

-- Professional Exchanges: $900,000. Collaborative research and interchange will be further expanded into the areas of media, business, politics, etc. Greater use will be made of the Center's extensive and highly influential alumni network.

-- Public Education: $1,000,000. A major new program of public education and outreach will be created to make information and analysis about the region more accessible and understandable to decision makers and opinion leaders, and to improve the general public's understanding of the region.

- -- Cultural Change: $700,000. Several major studies will explore the direct linkages between cultural factors and social change and economic development.
- -- Administration: $1,000,000. These programs will require increased administrative support.

QUESTIONS SUBMITTED BY SENATOR DALE BUMPERS

QUESTION:

I understand that the Agency is requesting $15.8 million for the National Endowment for Democracy, which was funded at this level in 1989. I would like to know exactly how NED spends its funding, including an itemization of the organizations and groups to which it lends its resources.

ANSWER:

The enclosed testimony reviews the scope of the Endowment's programs throughout the world. More detail on all Endowment grants awarded in FY 1988 is provided in our enclosed annual report. We would be happy to provide any additional information requested.

STATEMENT OF WILLIAM E. BROCK
CHAIRMAN
NATIONAL ENDOWMENT FOR DEMOCRACY
TO THE
HOUSE FOREIGN AFFAIRS SUBCOMMITTEE
ON INTERNATIONAL OPERATIONS

Thursday, March 9, 1989

Mr. Chairman and Members of the Subcommittee:

I am delighted to have the opportunity this morning to review with you the work of the National Endowment for Democracy.

As one of the Endowment's founding members, I believe strongly that this is a program of far-reaching importance to the future of our country. Those of us who worked to establish the Endowment -- and I count the Chairman of the Committee on Foreign Affairs, Congressman Dante Fascell, as the chief architect and guiding spirit of this whole initiative -- were troubled by the apparent inability of our immensely successful and vibrant country to promote its values among the peoples of the world. The fact that we are a multi-ethnic country whose people are drawn from every corner of the globe only highlighted this strange incapacity of ours to credibly defend and advance our cherished democratic way of life.

Recently, however, there have been hopeful signs that this may be changing. People around the world are engaged as never before in a struggle to establish new democracies. It is natural for them to turn to the U.S. for assistance which, since the Endowment's establishment, we are now in a position to provide.

The impressive performance of the National Endowment for Democracy since it began its operations five years ago is one of the real success stories in our nation's capitol. Some people questioned the Endowment's purpose and potential when it was founded, but it has survived to build a program as essential to our security as it is to the cause of peace and freedom in the world.

The Endowment has come of age. In the process, it has earned broad bipartisan support in the Congress and enthusiastic backing from people around the world who believe in democracy.

Those who have studied democratic development and those who have participated in the struggle to build free societies have reached the same conclusion: basic freedoms, human rights, and equal opportunity for all can only be truly secure if they are grounded in a variety of independent non-governmental economic, political, social and cultural institutions. Simply stated, people who can choose to join free trade unions, exercise their economic initiative, select candidates from two or more competing political parties, read an uncensored press and join others in open worship are, by definition, free.

If we hope to help others build a society with these values, it is essential that we do what we can to nurture and develop throughout the world those very instruments which have meant so much to us and which we often take for granted -- namely, the free, voluntary and independent institutions of civil society that are the bedrock of our democracy and the true source of our nation's strength and political stability. Helping to build those institutions abroad, in conjunction with their counterparts in our own society, is precisely what the Endowment is all about.

Thus, assistance to free trade unions, business associations and political parties has been provided, respectively, through the Free Trade Union Institute of the AFL-CIO, the Center for

International Private Enterprise of the U.S. Chamber of Commerce, and the National Democratic and National Republican Institutes for International Affairs. Support has also been given to civic organizations of women and youth, public policy institutes, and a variety of free media, including newspapers, books, videos and films.

In its actions, the Endowment has held firm to a basic commitment: all grants are open to public scrutiny. This openness has been a source of the Endowment's strength and credibility, both here and abroad. Just last year, for example, the Endowment undertook a major effort to assist the process of democratic transition in Chile. Voters were being asked to choose whether to extend General Augusto Pinochet's rule until 1997 or to have free elections this year. The Endowment, through its core institutes and other U.S. groups, was actively involved in supporting efforts by Chilean democrats to achieve a peaceful transition. These included efforts to broaden political participation through voter registration and civic education and to establish a monitoring system that would help ensure the fairness and integrity of the entire process.

There were some attempts to discredit the assistance that was offered by claiming it was foreign interference. But because the assistance was offered openly, with the sole objective of strengthening a democratic process, the assistance was publicly defended and widely applauded in Chile. And in the end, the Endowment was able to assist democracy in Chile without itself becoming an issue. It is hard to exaggerate the amount of goodwill that Chileans felt for the United States as a result of the Endowment's quiet, prudent and effective support for democracy in that country.

This is just one of many examples which demonstrates why the Endowment is potentially the most effective instrument we have for advancing our ideals in the world, and why it should be funded at a level commensurate with its far-reaching mission. It is cost-effective, activist and engaged. It not only provides concrete assistance to democrats on the frontlines of political struggle in the world, but it sends a message of solidarity and democratic commitment. It gains goodwill for our country even as it assists our friends and thereby advances our interests. It's an organization that is making a real contribution to a better world -- one in which all Americans can take pride.

I would like to submit for the record, Mr. Chairman, the Endowment's 1988 Annual Report which gives a summary of every grant made during the last fiscal year. The Subcommittee is already in possession of the four previous annual reports of the Endowment. I would like to take a moment, Mr. Chairman, to highlight some of the Endowment's accomplishments to date.

Supporting Peaceful Transitions to Democracy

I have already mentioned Chile as an example of a country where the Endowment helped to promote a process of peaceful democratic transition. Other countries where Endowment programs, largely carried out through the four core institutes, have contributed to the process of transition include: Grenada in 1984, Guatemala in 1985, the Philippines in 1986, South Korea in 1987, and Pakistan in 1988. Though the transition process was violently disrupted in Haiti in 1987, the Endowment continues to support trade union, party-building and civic education programs there in the hope of encouraging the present government to resume the process.

The Endowment is now devoting great attention to the support of a democratic transition in Paraguay, where the thirty-five year Stroessner dictatorship was recently overthrown; and in Namibia where the National Democratic Institute is preparing a voter education program in anticipation of the November 1st elections for a Constituent Assembly, the establishment of an independent election monitoring system, and seminars which seek to encourage a commitment to peaceful competition among political activists of diverse views.

In assessing the importance of the Endowment's work on behalf of peaceful democratic transitions, it is important to bear in mind the damaging consequences of transitions that become violent and do not lead to democracy. Indeed, the Endowment was founded partly on the belief that strengthening the democratic infrastructure in vulnerable developing countries would serve U.S. interests by preventing political breakdowns of the kind that occurred in Nicaragua and Iran which were exploited by anti-democratic elements. The Endowment offers long-term political development as a cost-effective means to assist friends of democracy before crises develop that could draw the U.S. into costly military involvements. This is surely an objective that is shared by both liberals and conservatives in our country.

Strengthening Democracy and Pluralism

It is, of course, not enough simply to support transitions to democratically-elected civilian governments. The main work of the Endowment is devoted to strengthening the fragile institutional structures of countries where democracy is newly or only very tenuously established, or where it doesn't exist at all but can become a future possibility if work is done now to lay a foundation of institutional pluralism.

A number of programs are underway in this area that deserve special mention, among them the work of Hernando de Soto's Institute for Liberty and Democracy (ILD) in Peru. The ILD has received support from the Center for International Private Enterprise for its campaigns to dismantle some of the statist and bureaucratic barriers that have forced hundreds of thousands of small entrepreneurs to operate outside the law in the informal sector. The ILD's accomplishments include passage of a "popular mortgage" bill to create a new credit market for 231,000 informal entrepreneurs with a potential value of $111 million in credit; ending a transportation strike in the informal sector by reducing tariff barriers that prevented entrepreneurs from building wealth; and adjudicating on behalf of over 50,000 Peruvians who benefited from 21 class action suits to promote access to property rights for the poor. By responding to the needs of "informal" microentrepreneurs for property rights, credit and legal guarantees, the ILD hopes to assimilate the entrepreneurial energy of the poor and to build a constituency for a more open, growth-oriented economic system. Moreover, the empowerment and inclusion of the popular classes through greater opportunity is a precondition for broadening and consolidating democracy in many developing countries. The work of the ILD is now being emulated by similar groups throughout Latin America as well as in Africa and Asia.

Another important initiative has been the development of women's organizations committed to popular civic education and the nurturing of democratic values. The Endowment's work in this area began in 1984 when support was provided to Conciencia, a women's civic action movement in Argentina. Conciencia established chapters throughout the country whose members conducted hundreds of seminars on the constitution and the rights and responsibilities of citizens. Its work has also emphasized accountability of local government, the introduction of civic education in school curricula, and democratic education through the mass media. With Endowment support, organizations like Conciencia have been established in Colombia, Peru, Uruguay, Paraguay, the Dominican Republic and Guatemala. A similar organization called KABATID has also been established in the Philippines. Later this year KABATID will host a conference of women civic leaders from eight other countries in the region in the hope of spreading the movement elsewhere in Asia.

Other initiatives have aimed at strengthening democratic culture through the publication of a rich democratic literature. Libro Libre, an association of distinguished Central American based in Costa Rica has published about one hundred titles in attractive paperback form. The books range from such democratic classics as The Federalist Papers and Tocqueville's Democracy in America to contemporary works of history, literature and current affairs by Central American writers. Libro Libre's books are used in schools, universities and libraries throughout Central America, and its conferences are attended by leading intellectuals from the region as well as from Europe and the U.S.

Yet another initiative aimed at reinforcing democracy is a project on civil-military relations undertaken by NDI. The project has focused on the need to reconcile the civil-military relationship in Argentina in a democratic context. The project seeks to integrate the armed forces into civil society, train civilian politicians and legislative staff in defense matters, and strengthen institutions that can foster dialogue between the civilian and military sectors.

The states of the Caribbean, whose fragile economies and small size make them vulnerable to attempts to undermine democracy, have also been an important area of Endowment programming. The Caribbean Publishers and Broadcasters Association (CPBA) has provided training and advisory services to newspapers and radio stations in Haiti, Grenada, St. Vincent, St. Lucia, Guyana, Dominica, St. Kitts, Montserrat and Antigua. At the request of the CPBA, the Endowment also provided start-up funding for the Stabroek News, the first independent newspaper established in Guyana since press restrictions were imposed by the government in 1971. NRI has supported the educational and party-building work of the Caribbean Democrat Union, a regional association of parties, and has also assisted the national civic education campaign of the Freedom in Democracy Committee of Dominica.

A similar challenge is faced in the South Pacific, where the Free Trade Union Institute has supported emerging free trade unions in the island nations of Papua New Guinea, Fiji, the Solomon Islands, Vanuatu, Kiribati, and Western Samoa. The assistance is used to sponsor Pacific unionists at regional seminars and conferences, provide support for reviewing and expanding membership services, and conduct labor education programs. Fiji, Kiribati, and Papua New Guinea were also represented at an Asia-Pacific regional seminar of the Committee for a Community of Democracies, which is working to build a network of citizens groups as part of a larger effort to establish an international association of democratic countries.

The Endowment is also expanding its programs in Africa, where strengthening institutional pluralism is a precondition for democratic progress. FTUI's programs include support for the educational, research and outreach activities of regional trade union federations in Southern, Central and West Africa, as well as for the establishment of a Women's Department within the Organization of African Trade Union Unity (OATUU); assistance to worker education programs in the Ivory Coast, Guinea, Cameroon, Burkina Faso, Gabon, Mali, Chad, Niger, Zaire and Mauritania; and intensive training at the George Meany Center for Labor

Studies for senior trade union leaders from Anglophone and Francophone Africa.

Other Endowment programs in Africa include CIPE support to the 45,000-member Southern Africa Black Taxi Association and to programs aimed at strengthening the research capability and media outreach of Chambers of Commerce in Kenya and Nigeria; a major conference to be sponsored by NDI in Liberia on the role of pluralist institutions in democratic development; support for a human rights organization and independent newspaper in Uganda; and assistance to an independent newspaper in Sudan, The Sudan Times, which seeks to promote, through public dialogue and debate, the unity of the Sudan under a democratic system of representative government.

Eastern Europe and the Soviet Union

The East Bloc is a region that poses a unique challenge to the Endowment. An historic process is underway there of evolution away from the classic Communist model of society. The process differs from country to country: in Hungary it involves constitutional and legal steps toward pluralism; in Poland, the establishment of independent, grassroots civil institutions; and in the Soviet Union, a process of "opening" decreed by the government. While it is difficult to see where these trends will lead, clearly there are unprecedented opportunities for democratic advance at this time.

The Endowment has developed an innovative program of support to newly emerging democratic organizations in the region. The greatest assistance has been given in Poland, where FTUI supports Solidarity and other support is extended for independent publishing as well as cultural and educational activities. Growing support is also being given to independent publishing and educational programs elsewhere in Eastern Europe, especially in Hungary and Czechoslovakia. Support is also provided to Russian-language journals produced in the West but distributed in the Soviet Union, and increasingly to independent publishing activities inside the Soviet Union itself, including within the non-Russian republics.

This brief survey suggests the scope, diversity and innovation of the Endowment's programs. Some of the most creative initiatives include:

- Support for the Institute for a Democratic Alternative in South Africa, which has created a broad framework for dialogue among blacks and whites who want to replace apartheid with a democratic system;

- Support for labor, political, business, media, youth and human rights groups in Nicaragua that are working for the establishment of democracy. The Endowment's approach in Nicaragua has earned broad bipartisan support in Congress despite the otherwise deep divisions on the Nicaraguan issue;

- Support for The Chinese Intellectual, a journal of independent opinion circulating in China whose editor has now established a major intellectual center in Bejing which will help expand contact between China and the West;

- Support to the Cultural Council of the Afghan Resistance, which established pilot schools inside Afghanistan at a time when the entire educational system had been devastated by the Soviet invasion; and

- Support to valiant independent media, such as La Prensa in Nicaragua and Radio Nanduti in Paraguay, which have upheld the principles of independent expression and freedom of the press in the face of harsh repression and harassment.

Obviously, the work of the Endowment has already borne fruit. Yet, despite the success of its programs to date, their development -- and particularly the development of new initiatives -- has been stymied by the Endowment's budget limitations.

Now in its sixth year of operation, the Endowment is operating at a level of resources well below that of its first year. The quality and quantity of proposals the Endowment receives has increased dramatically as people develop a better understanding of the Endowment, as NED gains experience, and as more and different kinds of initiatives that can be undertaken are developed. Yet at the very time that the quality and number of requests has been increasing, the level of resources has decreased since the Endowment reached its peak funding in 1985 at $18.5 million. The current appropriation is $15.8 million, about half the authorized level for the Endowment in its first year and less than half the amount requested by the USIA for NED in fiscal year 1990.

The climate of budgetary stringency under which the Endowment has had to operate has affected its overall program in a number of ways. The Endowment has been forced to fund only those programs that are the most urgent and critical. Often, we are unable to support a full program which merits funding but must choose to fund only its most critical component. And many new initiatives which have a long-term training or civic education component must be sacrificed entirely.

The average size of Endowment grants has also decreased significantly -- the Endowment is making more grants and spreading less money over a broader surface. This has a tremendous effect on responding to new requests. If the Endowment tries to continue certain critical ongoing programs, it must sometimes cut other valuable ongoing programs whose impact cannot immediately be shown.

Important programs have been cut in Afghanistan, Haiti, Central America and elsewhere. And there are large areas of the world where the Endowment is not now able to supply the required resources. Both Africa and the Islamic world represent important areas where, if adequate funding was provided, much more could be done.

These budgetary constraints limit the Endowment's effectiveness at a time when it should be taking greater advantage of expanding opportunities. As international political competition becomes an increasingly salient feature of world politics in an age of nuclear stalemate, the Endowment offers the most cost-effective and politically attractive way to advance U.S. interests and values.

The world is changing at an accelerating pace and we need new methods to cope with it and to interact creatively with developing nations. The scientific and technological revolution is creating an international community that is at once more integrated and competitive. In addition, the revolution in communications and information has brought us into closer contact than ever before with foreign cultures and distant countries. Such developments require us to reexamine the means by which we have tried to influence events and trends abroad, and to ask how we can best advance our values of democracy and equal opportunity in the fluid and rapidly changing environment in which we live.

In this regard, I believe the Endowment is an organization uniquely qualified to promote our highest ideals and to strengthen and enlarge the community of democracy in the world. The funds needed to allow this vital initiative to take off are meager compared to the enormous scope and importance of the issues and the stakes involved, and the tremendous opportunities for freedom that lie ahead.

QUESTION:

I have a strong interest in educational and cultural exchange programs, particularly Fulbright scholarships. I can't emphasize enough how important it is for Americans to learn about and appreciate other cultures, as well as for citizens of other nations to be introduced to our way of life through the student ambassadors. If committee funding were increased for the Fulbright program or the other exchanges, can the Agency specify how this money would be spent -- *i.e.*, would the funds be placed into additional scholarships, administrative expenses, or what?

ANSWER:

The Agency is strongly committed to the Fulbright academic program and other exchange programs, which are the mainstay of our effort to increase understanding among peoples of the world. We endeavor to allocate as many of our exchange resources as possible to actual scholarships and grants for participants. Cost-sharing, in-kind contributions and efficient management to limit administrative expenses are encouraged in all our exchange programs. Should funding for exchanges be increased, we anticipate that the numbers of scholarships and grants would increase (in some cases, the increase might take the form of enrichment or extension of existing programs, to best meet participants' needs). A proportionate amount would go towards expenses required to administer the expanded programs, in line with our policy of keeping these costs to a minimum.

QUESTION:

How much did USIA request of the OMB for educational and cultural exchange programs, especially the Fulbright program? I would appreciate a breakdown of these numbers.

ANSWER:

The Agency's 1990 request to OMB for the Educational and Cultural Exchange Program appropriation was $159,660,000. The breakdown is as follows:

Academic Exchange (Fulbright Program)...	$98,862,000
International Visitor Program...........	42,077,000
Hubert H. Humphrey Fellowships..........	5,564,000
Soviet Youth Exchanges..................	1,387,000
Congress-Bundestag Exchanges............	2,473,000
Private Sector Program..................	9,297,000
Total........................	159,660,000

SUBCOMMITTEE RECESS

Senator HOLLINGS. We will recess until 10 o'clock Thursday, where we will hear the Secretary of State in room SD-138 of the Dirksen Building. Thank you.

[Whereupon, at 10:45 a.m., Tuesday, April 11, the subcommittee was recessed, to reconvene at 10 a.m., Thursday, April 13.]

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